TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~202~~. 455

FREDERICK WEHRMAN, APPELLANT,

vs.

T. B. CONKLIN AND E. F. CONKLIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED OCTOBER 18, 1890.

(14,332.)

LAW ASSOCIATION OF PHILADELPHIA

(14,332.)

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vs.

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1 UNITED STATES OF AMERICA, *Northern District of Iowa.*

Pleas before the circuit court of the United States in and for the northern district of Iowa, western division, at a term begun and holden at Sioux City, in said district, on the 7th day of May, A. D. 1889, before the Hon. O. P. Shiras, judge.

T. B. CONKLIN & E. F. CONKLIN *vs.* FREDERICK WEHRMAN. } No. 93. Equity.

Be it remembered that heretofore, to wit, on the 27th day of April, A. D. 1889, there was filed in the office of the clerk of the circuit court of the United States in and for the northern district of Iowa, western division, and in above-entitled cause, a bill of complaint; which said bill of complaint is in words and figures as follows, to wit:

2 In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants, *vs.* FREDERICK WEHRMAN, Defendant. } In Equity.

To the honorable judges of the circuit court of the United States in and for the northern district of Iowa, western division:

T. B. Conklin and E. F. Conklin, of O'Brien county, in the State of Iowa, and each being a resident in and citizen of the said State of Iowa, bring this their bill against Frederick Wehrman, of Pierce county, in the State of Wisconsin, and a resident in and citizen of said State of Wisconsin, and thereupon your orators complain and say—

That they are the absolute owners of the following-described premises, situated in the county of O'Brien and State of Iowa, to wit, the west half of section thirty-three (33), in township ninety-six (96) north, of range thirty-nine (39) west, of the 5th P. M.; that their title to said premises rests upon the following facts and is derived as follows:

That there-fore, to wit, on the 9th day of June, A. D. 1857, one Adolph Wehrman, the father of the defendant, purchased said land from the United States Government, and afterwards on the first day of December, A. D. 1859, said Adolph Wehrman received a patent to all of said land from said United States, including some 1,700 acres of other lands in said county of O'Brien.

That afterwards and on the 17th day of December, 1859, the said Adolph Wehrman, as your orators are informed, made a pretended conveyance of said land along with a large amount of other lands to the defendant herein, Frederick Wehrman, and which said conveyance purported to be a full warrantee deed and covered in all

some two thousand and sixty acres of land, including the land now owned by these complainants; that at the date of the said pretended deed the said county of O'Brien, in which all of said lands described in said deed were situated, was attached to the county of Woodbury, Iowa, by act of the legislature of the State of Iowa for revenue, election, and judicial purposes, and so remained attached to said Woodbury county until the 6th day of February, 1860, when it was duly organized as an independent county, and has so remained ever since; that said pretended deed to said lands was duly filed for record in the proper office in the said county of Woodbury on the 2nd day of January, 1860, and in all respects duly recorded in said office and indexed; that after the organization of said county of O'Brien as aforesaid a properly certified copy of deeds of lands in said O'Brien county, which had been filed in said Woodbury county prior to the organization of said O'Brien county, was made, as by the laws of the State of Iowa provided, and sent to said O'Brien county, and was by said county placed in and became a part of the records of the recorder's office of said county and has so remained ever since, and is known and designated as "duplicate deeds" record; that said duplicate deeds record contained what purports to be a true copy of the record of the said deed from Adolph Wehrman to the defendant hereinabove described, and said deed now appears in the said duplicate deeds record; that a copy of the said deed as so recorded is hereto attached, marked Exhibit "A," and
3 made a part of this bill.

Your orators further aver that on the 14th day of January, 1861, a copartnership under the firm name and style of Greely, Gale & Co. commenced an action in the district court of said O'Brien county wherein said Adolph Wehrman was defendant, and which said action was brought by attachment and the said Greely, Gale & Co. duly filed their petition in said action in the said district court of O'Brien county on said 14th day of January, 1861; that a true copy of the said petition so filed is hereto attached as Exhibit "B" and made a part of this bill; that in the said action said Greely, Gale & Co. asked for the issuance of a writ of attachment against the property of the defendant therein, said Adolph Wehrman, and duly filed their bond as by law required for the issuance of said writ of attachment, and which said bond was duly approved by the clerk of the said district court; that said action was brought upon a certain judgment rendered by the circuit court of Pierce county, in the State of Wisconsin, against said Adolph Wehrman on or about the 12th day of March, 1860, and in favor of said Greely, Gale & Co. for the sum of $1,940.30 damages and costs, and which said judgment was based upon the notes of the said Adolph Wehrman, given long prior to the date of the said pretended conveyance of said lands to the defendant herein, by said Adolph Wehrman; that said judgment was rendered on personal service on said defendant Adolph Wehrman in said Pierce county, in the State of Wisconsin, and was in all respects in due conformity to the laws of Wisconsin; that a sale of the premises described in said judgment was made by the referee therein named as therein

provided, and a due report of such sale was made by said referee to said circuit court, showing the deficiency remaining unpaid after such sale in the sum of $1,640.33, which said report was by said court duly confirmed and a judgment for said deficiency rendered on the 12th day of September, 1860; that said summons and said confirmation of said report and the entry of judgment *of judgment* thereon are all shown by true copies thereof hereto attached, marked Exhibit "B 1," "B 2," and "B 3," and made a part of this bill; that said proceedings were all in due conformity to the laws of said State of Wisconsin; that a writ of attachment was duly issued, as prayed for in said petition, by the clerk of said district court of O'Brien county on the 14th day of January, 1861, and the said writ directed the sheriff of said O'Brien county, to whom the same was directed, to make due return thereof by the first day of the then next term of said district court, which said writ recited would commence on the 3rd day of June, A. D. 1861; that said writ was duly placed in the hands of the sheriff of said O'Brien county on the 14th day of January, 1861, for service, and was by said sheriff duly served on the same day by levying the same upon the land heretofore described as now owned by your orators, together with some 1,700 acres of other lands in said county, being the same lands described in said deed above referred to from said Adolph Wehrman to the defendant herein; that after the levy of said writ as aforesaid and prior to the said 3d day of June, 1861, said sheriff made due return of said writ and his doings thereunder to the clerk of the said district court of O'Brien county, as by law and said writ required; that a true copy of the said writ of attachment, together with the said return of the sheriff thereon, is hereto attached, marked Exhibit "C," and made a part of this bill.

Your orators further aver that an original notice was duly issued in said cause and was duly placed in the hands of the sheriff of Pierce county, in the State of Wisconsin, on the 25th day
4 of January, 1861, for service of the same on said defendant, and that on said date the said notice was personally served on said defendant Adolph Wehrman in said county of Pierce, State of Wisconsin, all of which fully appears in said original notice and the return thereon, and a true copy of which said notice is hereto attached, marked Exhibit "D," and made a part of this bill; that said original notice with said return of service was duly filed in the office of the clerk of said district court of O'Brien county on the 23rd day of April, 1861.

Your orators further aver that at the several times above referred to, to wit, at the time of the filing of said petition and the issuance of said writ of attachment and the service of said original notice, there was no time fixed by law for the holding of the terms of said district court in said O'Brien county, but at said time, under the law of the State of Iowa, the judge of said court was required to appoint the terms of said court by a written notice to the clerk thereof, fixing the times when said court would be held; and your orators aver that prior to the filing of said petition and issuance of said writ of attachment the judge of said district court did in fact appoint a

term of said court to be held on the 3rd day of June, 1861, in said county by giving the clerk of said court written notice that a term of said court would be held on the 3rd day of June, 1861, in said county; that no record of such order can now be found among the records of said court; that afterwards, to wit, on the 23rd day of March, 1861, the judge of said court sent a written notice to the clerk thereof appointing the holding of a term of said court for the said 3rd day of June, 1861, and which notice was received by the clerk of said court and filed by him on the 23rd day of April, 1861, and was duly recorded by him, and the said record of said notice is the first and only record of the appointment of said June term of said court for the year 1861 which can now be found among the records of said court.

Your orators further aver that there cannot now be found among the records of said court any record of the filing of the said petition or of the issuance of the said writ of attachment or of the levy of the same or of any proceedings of said district court at its said June term, 1861; that in the book purporting to be the record of said court for the years 1861 and 1862 the only entries which can now be found of the proceedings of said court are the entry on the first page of said book of the said notice of March 23d, 1861, filed April 23rd, 1861, appointing said June term of said court, and of a like notice from the judge of said court to the clerk thereof appointing a term of said court to commence on the 9th day of June, 1861, and which said entry appears on the second page of said record, and is followed on the next and several succeeding pages with entries of the proceedings of said June, 1882, term of said court; that there are no other or further entries of the proceedings of said district court to be found in said county from the date of the last-mentioned proceedings until the year of 1870, and your orator avers that there are in said county now no records of said court to be found for said intervening years other than such original papers as may have been filed in said clerk's office during said time; but your orators aver that the said June term of court, 1861, was in fact held, and that the proceedings above referred to and set out were in fact had at the several dates thereof.

Your orators further aver that afterwards, to wit, on the 13th day of August, 1861, the said Greely, Gale & Co. made application in vacation to the Hon. A. W. Hubbard, the judge of said
5 district court, for a change of venue in said cause from said county of O'Brien, and which said application was by said judge on said date sustained and an order made changing the venue of said cause from said O'Brien to the county of Woodbury, in said State, and a true copy of which said application and order granting said change is hereto attached, marked Exhibit "E," and made a part of this bill; that said order was duly signed by the judge of said court, but your orators say that no record of the said proceedings, other than a certified copy of the same, can now be found among the records of said cause, and which said certified copy of the said application and order is the one sent to said Woodbury county by said clerk, but they aver that such record was duly

made and together with the other records above referred to as not now in existance have become lost or destroyed.

Your orators further aver that upon the said order being made for the change of the venue of said cause to Woodbury county the clerk of said district court of O'Brien county made a correct transcript of the said application and order and sent the same to the clerk of the district court of Woodbury, Iowa, together with the original papers filed in said cause, except said application and order, and all the said papers were duly filed by the clerk of said district court of Woodbury county on the 2nd day of September, 1861, and the said cause duly docketed in said court.

Your orators further aver that at the time of the issuance of the said writ of attachment and the making out and certifying to the said transcript in said cause so sent to said district court of Woodbury as aforesaid the clerk of said district court of O'Brien county had not been provided with any seal of said district court, nor was there any such seal for said district court of O'Brien county in existence at said dates; that by reason of there being no such seal for said court at said dates the said clerk could not attach any seal to the said writ of attachment or to the said certified copy of said record in said cause and did not so attach any such seal, but in the place and stead of such seal the said clerk did make use of a scroll with the word "Seal" in the same as and for the seal of said district court of O'Brien county and did attach such scroll to the said writ of attachment and said certified copy of said records in the place of said seal and on account of having no such seal as was usually provided for district courts of the State of Iowa.

Your orators further aver that after the said cause was so transferred to the district court of said Woodbury county the said court did, at its regular September term, 1861, and on the 17th day of September, 1861, render a judgment in said cause against the said Adolph Wehrman, defendant therein, who in no manner appeared in said cause, but made default, and which said judgment was for the sum of eighteen hundred and nine dollars and forty-eight cents damages and the costs of said action, taxed at six dollars and sixty-two cents, and your orators aver that by the terms of said judgment the lands described and set out in said writ of attachment, including the land now owned by your orators and above described, were ordered to be sold in satisfaction of the said judgment so rendered against the said Adolph Wehrman, the said lands so ordered to be sold being the lands theretofore actually attached in said cause; that said judgment was duly recorded in the records of the said district court of Woodbury county and duly docketed, as by law required, and a true copy of which said judgment and docket entry thereof is hereto attached, marked Exhibit "F," and made a part of this bill.

Your orators further aver that afterwards, to wit, on the 12th day of December, 1861, a duly certified copy of the said judgment
6 and transcript thereof was duly filed in the office of the clerk of the district court of said O'Brien county, and the said clerk of said court did make due entry of the same on the judgment

docket "A" of said court, as by law required, and a true copy of which said docket entry of said judgment is hereto attached, marked Exhibit "G," and made a part of this bill.

Your orators further aver that afterwards and prior to the session of the June term, 1862, of said district court of O'Brien county, Iowa, the said Greely, Gale & Co. commenced action in equity in said district court of O'Brien county and did file their petition in said court against the said Adolph Wehrman and his wife, Augusta Wehrman, and the defendant herein, Frederick Wehrman, making all of said parties defendant in the said action; that your orators cannot now give the exact date of the commencement of said action, for the reasons hereinafter set out; that said action was commenced for the purpose of setting aside and having cancelled the said pretended deed from said Adolph Wehrman to the defendant herein, Frederick Wehrman, as fraudulent and void against the said Greeley, Gale & Co. and for the purpose of subjecting the said lands described in the pretended deed to the defendant herein, and which included the land now owned by your orators and described above, to the payment and satisfaction of the said judgment theretofore rendered by the district court of Woodbury county, as aforesaid, against said Adolph Wehrman and in favor of the said Greeley, Gale & Co.; that in the said cause the said plaintiffs alleged the rendition of the said judgment against the said Adolph Wehrman, and that the said conveyance was made for the purpose of hindering and delaying and preventing said Greeley, Gale & Co. in collecting the said claim and judgment against the said Adolph Wehrman, and that the same was without consideration and fraudulent and void and of no force or effect as against the plaintiffs in said action, and praying that the said conveyance be set aside and cancelled and declared void as against said plaintiffs, and asking that said lands be all subjected to the payment of the said judgment of Greeley, Gale & Co. against said Adolph Wehrman, rendered by said district court of Woodbury county aforesaid; that these complainants are unable to set out a copy of the said petition in said cause or of any of the papers therein, for the reason that the same have become lost or destroyed and the same cannot be found; that due and personal service of the original notice in said cause was had upon each of the defendants therein, including the defendant in this cause, Frederick Wehrman, in the State of Wisconsin; that after the commencement of said action and the service of said notice as aforesaid and at the June term, 1862, of said district court of O'Brien county, that being the term of court for which said action was brought and said notice served, a decree was rendered in said cause, there being no appearance for the defendants or any of them in said cause, and by the terms of which said decree the said deed from said Adolph Wehrman to said Frederick Wehrman, the defendant herein, was declared to be fraudulent and void as against the said Greeley, Gale & Co., and the same was by said decree duly cancelled and set aside, and the said lands described in the said petition and in the said writ of attachment levied as hereinbefore set out were by said decree declared to be subject to the satisfaction

of the said judgment of the district court of Woodbury county, Iowa, and said lands were by said decree ordered to be sold for the satisfaction of the said judgment rendered by said district court of Woodbury county as aforesaid and the proceeds arising from the sale of said lands be applied to the payment of the said judgment against the said Adolph Wehrman and all of the said lands so subjected to the payment of said judgment, including the said
7 land now owned by your orators, being fully set out and described in the said decree; that a true copy of the said decree is hereto attached, marked Exhibit "H," and made a part of this bill.

And your orators aver the fact to be that the said pretended deed from said Adolph Wehrman to the said Frederick Wehrman was in fact fraudulent and void as against the said Greeley, Gale & Co.; that the same was made without any consideration and for the express purpose on the part of all the parties thereto of cheating and defrauding the said Greeley, Gale & Co. out of their said claim against the said Adolph Wehrman, said Greeley, Gale & Co. being at the time creditors of said Adolph Wehrman, and was made for the purpose of hindering and delaying said Greeley, Gale & Co. in the collection of their said claim from said Adolph Wehrman.

Your orators further aver that during all the time of said proceedings in said district court of O'Brien county and of Woodbury county aforesaid the said Adolph Wehrman, Frederick Wehrman, and Augusta Wehrman were residents of the State of Wisconsin.

Your orators further aver that said decree, so rendered by said district court of O'Brien county aforesaid, absolutely bars and estops the said Frederick Wehrman from ever making any claim to any of the said lands described in said decree under and by virtue of the said deed of conveyance to him by said Adolph Wehrman and his wife, Augusta, and your orators aver that said Frederick Wehrman, defendant herein, is now forever barred and estopped by the said proceedings in the said cause and the said two causes from now making any claim of any kind to said premises or any part thereof, and that his rights in and to said premises as against the said Greeley, Gale & Co. and their grantees have been fully and finally adjudicated by the said decree of said district court of O'Brien county, as hereinbefore set out; that said decree has never been appealed from or in any manner changed or reversed, but has always been and is now in full force and effect against the said defendant herein.

Your orators further aver that after the rendition of the said decree by said district court of O'Brien county, to wit, on the 16th day of June, 1862, said Greeley, Gale & Co. caused an execution to be issued out of the office of the clerk of the district court of Woodbury county, Iowa, on the said judgment in their favor and against said Adolph Wehrman, directed to the sheriff of O'Brien county, Iowa, and commanding him, said sheriff, to make the amount of the same, together with all costs, out of the property of the said Adolph Wehrman in said county, and a true copy of which said execution is hereto attached, marked Exhibit "I," and made a part of this bill;

that said execution was duly placed in the hands of the sheriff of said O'Brien coutny on the 23rd day of June, 1862, and on the same day the said sheriff duly levied the said execution upon all of the said lands described in the said writ of attachment and in the said decree rendered in said chancery suit as hereinbefore set out, including the land now owned by your orators and above described, for the purpose of selling said lands in satisfaction of the said judgment as in said decree directed; that said sheriff gave the notices as by law required of the time and place of selling said lands under said execution, and in all respects complied with the law in respect of the said levy and giving the notice of sale under said execution; that in pursuance of the said notice said sheriff did, on the 31st day of July, 1862, at ten o'clock in the forenoon of said day, sell said lands, including the land now owned by your orators, to one Carlos S. Greeley, he being the highest and best bidder therefor, and said sheriff did then and there execute and deliver
8 to the said purchaser a certificate of purchase as by law provided; that said execution was afterwards by the said sheriff duly returned to the clerk of the said district court of Woodbury coutny with the doings of said sheriff duly endorsed thereon; that the said return is fully set out on the said copy of said execution, marked heretofore as Exhibit "I," and said return is made part of this bill.

Your orators further aver that the said judgment was by the said sale of said lands fully satisfied, and such satisfaction was duly entered upon the said judgment, as shown on Exhibit "F," heretofore attached to this bill.

Your orators further aver that no redemption was ever made by any one whomsoever from the said judicial sale, and that afterwards and in pursuance of said sale and on the 31st day of December, 1864, said land not being redeemed, the sheriff of O'Brien county, Iowa, duly executed and delivered to the said Carlos S. Greeley a sheriff's deed of all said lands, including the land now owned by these complainants; that said sheriff's deed was duly filed for record in the office of the recorder of O'Brien county, Iowa, on the 28th day of January. 1865, and recorded in Book "A" of deeds of lands in said county, on page 510; and afterwards, to wit, on the 12th day of October, 1870, was again duly filed for record in said recorder's office and duly recorded in Book D of lands in said county, on page 367, and at each time of so recording the deed was duly indexed in the proper index of deeds of lands in said county.

And your orators aver that under and by virtue of the said several proceedings aforesaid and the said sale of said land under said execution and the said sheriff's deed of said lands, including the land now owned by your orators, the said Carlos S. Greeley became and was the absolute owner of said lands and had full right and authority to sell and convey the same and make good title thereto as against the said Adolph Wehrman and also the defendant herein.

Your orators further aver that the said land was subject to assessment for tax purposes in the years 1858 and 1859; that taxes for

each of those years were duly levied and said land duly assessed for each of said years by the proper authorities of said Woodbury county, Iowa, to which county said county of O'Brien was then attached for the purposes of taxation, as hereinbefore set out; that said taxes so levied upon said land were never paid, but the same became and were delinquent and the said land subject to be sold for the same; that after the organization of O'Brien county, Iowa, as hereinbefore set out, the taxes on said land still remaining unpaid, the said county of O'Brien made claim to said taxes and the right to collect the same; that after such organization of said county of O'Brien and in the month of April, 1860, the county of Clay, in said State of Iowa, and which had theretofore been attached to said Woodbury county for revenue purposes in the same manner as said O'Brien county and had theretofore been duly organized as an independent county, brought an action upon an agreed statement of facts, in the district court of Woodbury county, Iowa, against the said county of Woodbury and its treasurer, for the purpose of recovering the taxes which said county of Woodbury had collected for the years 1858 and 1859, after the date of the organization of said Clay county, upon lands in said Clay county, and which were due and delinquent at the date of the organization of said Clay county, for the purpose of procuring a decree perpetually enjoining said Woodbury county and its treasurer from further collecting any of said taxes on lands in said Clay county unpaid at the date of its organization, and in the said action the said district court of Woodbury county adjudged and decreed that the said
9 taxes belonged to the said county of Clay and rendered a judgment against said Woodbury county for the same, and by its said decree also perpetually enjoined said Woodbury county or its treasurer from further collecting any of said taxes and decreeing that said Clay county was entitled to said taxes; that after the rendition of the said decree as aforesaid the county of O'Brien, by its duly authorized county judge, made a demand on the county court of Woodbury county and the treasurer of said county for the repayment to it of all taxes which had been by said Woodbury county collected on lands in said O'Brien county after the date of the organization of said O'Brien county, and which said demand was by said county court, through its judge, complied with, the said county of Woodbury in the said matter adopting the decree and determination of said district court of Woodbury county in the said cause of Clay county against said Woodbury county and recognizing the right of O'Brien county to said taxes under and by virtue of the decision in said cause; that said Woodbury county thereupon paid to said O'Brien county the taxes for the said years 1858 and 1859 so collected by it on lands in said O'Brien county after the organization of the latter, and did also furnish to the said county of O'Brien a properly certified copy of the tax records of said Woodbury county so far as the same covered lands in O'Brien county on which the taxes had not been paid at the date of the organization of said O'Brien county, and from and after the said date the said Woodbury county never made any claim of any kind to any

of the said delinquent taxes, but in all respects recognized and agreed to the claims of said O'Brien county thereto and did recognize the right and claim of right by said O'Brien county to enforce the collection of said delinquent taxes by sale of the lands therefor.

And your orators aver that the land- now owned by them and hereinbefore described were among the lands described in the said tax-list of 1858 and 1859 so certified to said O'Brien county as before alleged; that said taxes for said years 1858 and 1859 not being paid, the treasurer of said county of O'Brien did, at the regular tax sale in the year 1860, to wit, on the 22nd day of December, 1860, that being the date to which said regular tax sale, begun and held on the first Monday in October, 1860, was duly adjourned, sell the said land now owned by your orators for the said taxes of 1858 and 1859 to one Charles C. Orr and did issue to the said purchaser a tax certificate of said purchase and sale as by law required; that afterwards, to wit, on the 28th day of June, 1866, the said land not having been redeemed from said tax sale, the treasurer of said county of O'Brien executed and delivered to the said Charles C. Orr a tax deed in due form for all of said land, and thereupon the said Orr became and was the owner of said lands under and by virtue of the said tax deed; that said tax deed was duly filed for record in the office of the recorder of said county of O'Brien on the 7th day of July, 1866, and the same was duly indexed and duly recorded in Book B of deeds of lands in O'Brien county, on pages 147, 148, and 149 of said record.

Your orators further aver that whatever defects, if any, in said tax deed or any of the said tax proceedings there may be the same have long since been cured by the lapse of time and by the lapse of more than five years from the date of the record of said tax deed; that a true copy of said tax deed is hereto attached, marked Exhibit "J," and made a part of this bill.

Your orators further aver that said Charles C. Orr did, on the 6th day of May, 1861, for a valuable consideration, make and deliver to the said Carlos S. Greeley a quitclaim deed of all the right, title, and interest of the said Orr in and to the said premises, and which said deed was duly filed for record on the office of the recorder of the county of O'Brien and duly indexed and recorded on page 36 of Book E of records of deeds of lands in said county on the 29th day of May, 1871.

Your orators further aver that afterwards, to wit, on the 1st day of October, 1881, the said Carlos S. Greeley, being then a widower, did sell the northeast quarter of the southwest quarter of said section thirty-three (33), township and range aforesaid, to one Frank A. Turner, and did on said date, for a valuable consideration, execute and deliver to said Turner a full warrantee deed to the said forty acres of land, and which said deed was duly filed for record in the office of the recorder of O'Brien county and was duly indexed and then recorded in Book L of deeds of lands in said county, on page 56, on the 11th day of October, 1881.

And your orators further aver that afterwards, to wit, on the 11th

day of October, 1881, the said Frank A. Turner, being then a single man, sold the said above-described forty acres to your orator, T. B. Conklin, and did on said date execute and deliver to your said orator a full warrantee deed to the said land, and which said deed was duly filed for record in the office of the recorder of said county of O'Brien and duly indexed and recorded in Book L of deeds of lands in said county, on page 55, on the said 11th day of October, 1881.

Your orators further aver that on the 23rd day of February, 1882, the said Carlos S. Greeley, being then a widower, sold to your orator, T. B. Conklin, the northwest quarter and the northwest quarter of the southwest quarter of said section thirty-three (33) aforesaid for a valuable consideration, and did on said date execute and deliver to your said orator a full warrantee deed to the said described premises, and which said deed was duly filed for record in the office of the recorder of said county of O'Brien and *and* duly indexed and duly recorded in Book "L" of deeds of lands in said county, on page 157, on the 17th day of March, 1882.

Your orators further aver that afterwards, to wit, on the 19th day of September, 1884, the said Carlos S. Greeley, being then a widower, sold to your orator, T. B. Conklin, the south half of the southwest quarter of said section thirty-three (33) aforesaid, and did on said day execute and deliver, for a valuable consideration, a full warrantee deed for the said premises to your orator, T. B. Conklin, and which said deed was duly filed for record in the office of the recorder of said county of O'Brien and was duly indexed and recorded in Book "P" of deeds of lands in said county, on page 382, on the 24th day of September, 1884.

Your orators further aver that they are husband and wife, and were such at the dates of the said several purchases of said land by said T. B. Conklin; that they immediately took possession of each of the said several tracts of land at the date of the said several purchases of the same, and have ever since been in full, open, and notorious and adverse possession of all of the same and in the actual occupancy of all of the same during all of said time.

Your orators further aver that each of the said grantees of said lands from said Carlos S. Greeley, including your orator, T. B. Conklin, did, at the dates of the said several purchases of the same, make said purchases in good faith, and did all pay the full actual value for said lands; that he and his grantor of the said forty acres, Frank A. Turner, purchase- said land from said Carlos S. Greeley in the utmost good faith and in full reliance upon the title of said land being good and valid in law and in equity in the said Carlos S. Greeley as against the claims of the defendant herein and
11 . any one claiming by, through, or under him; that your orator, T. B. Conklin, in making the said purchase of said forty acres from said Frank A. Turner paid the full actual value of the said land and made said purchase in the utmost good faith and in full reliance upon the title to said land being good and valid in law and in equity as against the claims of the said defendant herein or any one claiming by, through, or under him; that at the times of making the said purchase of said lands and of paying the taxes

hereinafter referred to and in making the improvements as hereinafter set out your orators had no notice or knowledge whatever of any defects in the said title to any part of said land, but your orators aver that they in good faith believed the said decree against the said Adolph Wehrman and the defendant herein to be valid and binding, and that said tax deed was a good and valid tax deed to said premises, and that the title of the said Adolph Wehrman and the said Frederick Wehrman, the defendant herein, had been fully extinguished by the said decree and sheriff's sale under said judicial proceedings and the said tax sale, and that they had no knowledge whatever that the defendant herein made any claim whatever to the said land or any part thereof until the beginning of a suit in this court, on the law side, for the recovery of the possession of said land from your orators, as hereinafter set out.

Your orators further aver that they and their grantors from said Charles C. Orr and Carlos S. Greeley have paid all the taxes and assessments on said land for the period of thirty years and have expended large sums of money in so doing; that your orators have been in the actual, open, and adverse possession of all of said land, as hereinbefore alleged, and during said time have been making claim to be the absolute owners of said land under their said title, and while so in possession of the same have made large and valuable improvements on said land by putting some 600 acres of the same under cultivation and by the erection of substantial buildings and fences and digging wells and otherwise improving the said premises and making the same more valuable; that they have expended in the said buildings and fences and other improvements, not including the putting of said land under cultivation, the sum of one thousand dollars, and all of which was expended in good faith and full reliance on said title being good and valid, as hereinbefore alleged; that during all this time that your orators have been so improving said land and expending monies in paying said taxes the defendant herein never asserted any right or claim to said premises or in any manner notified your orators of his interest in said land or any claim thereto; that by the said improvements and expenditures your orators have made said land much more valuable than when they purchased the same, and have made said land now worth the sum of $25.00 per acre and in the aggregate of the full value of $8,000; and your orators aver that the defendant has lain by during all these years and has delayed to assert any claim to said premises until said land has become valuable by reason of the said expenditures and labors of your orators on the same.

Your orators further aver that said Adolph Wehrman and the defendant herein have never, either of them, paid any taxes or assessments on any part of said land, nor has any one ever paid said taxes for them; that all taxes levied upon said land from the date of its entry by said Adolph Wehrman have been paid by the sale of said land, as hereinbefore set out, for taxes and by the purchasers at said tax sale and by the said Carlos S. Greeley and his grantees; that said defendant herein has never made any claim to said land or any part thereof since the date of the said deed to him from said

Adolph Wehrman, nor has he ever exercised any acts of ownership or control over the same or sought or tried so to do or in
12 any manner given your orators any notice or knowledge of any claim by him to any of said land at any time prior to the commencement of said action heretofore referred to; that the defendant herein had actual knowledge of the fact that said land had been attached, as hereinbefore set out, and that judgment had been rendered against the said Adolph Wehrman and said lands ordered sold to satisfy said judgment, and also actual knowledge of the fact that said suit in equity was brought by said Greeley, Gale & Co. for the purpose of subjecting said land to the payment of said judgment and to set aside and have declared fraudulent and void and cancelled the said deed from said Adolph Wehrman to said defendant herein, under which he now makes claim to said land, and to subject the same to the payment of said debt ever since the commencement of said action in equity and the service of the notice therein on him, said Frederick Wehrman, and has never during all of said time, now more than 27 years, done any act or taken any steps to have said records corrected or in any manner set aside or to assert any claim on his part to said land or to notify purchasers of said land of his claim or interest to the same until the said action at law was commenced, as hereinafter set out; that during all of said time he has made no claim to said land, but has abandoned the same, and that by reason of said facts and his long delay he ought not now to be permitted to assert any title to said land, and your orators aver that he is now estopped by his said laches from so doing.

Your orators further aver that at the time of the said sale of said lands for said taxes and under said judicial proceedings said lands were wild, unoccupied prairie lands and the said county of O'Brien was very sparsely settled, and said lands were not worth to exceed the sum for which they were sold at judicial sale; that said Adolph Wehrman received the full value of said lands in said sale and the full benefit of the consideration paid by said Carlos S. Greeley for said lands; that said lands are now worth $25 per acre, owing to the said improvements made by your orators and to the settlement of the county and the increase of population therein.

Your orators further aver that they have at all times in all their acts with reference to the purchase and payment for and improvement of said lands, as hereinbefore set out, relied upon the fact that said defendant has never made any claim to said lands, and they were induced so to rely by reason of the silence of said defendant.

Your orators further aver that the defendant is barred and estopped by the statute of limitations from raising or urging any of the defects in the said judicial proceedings or the said tax proceedings or any defects in either of said titles, for that more than five years have elapsed since the said judicial proceedings were had and the said sheriff's deed and the tax deed aforesaid were executed and recorded.

Your orators further aver that the defendant is barred and estopped by the statute of limitations from raising or urging any

of the defects in the said judicial proceedings or the said tax proceedings or any defects in either of said titles, for that more than ten years have elapsed since the said judicial proceedings were had and the said sheriff's deed and tax deed aforesaid were executed and recorded.

Your orators further aver that the said land, together with all the balance of the lands described in said sheriff's deed to said Carlos S. Greeley, have been taxed and listed in the tax-lists
13 and the tax records of said county of O'Brien, State of Iowa, in the name of said Greeley, Gale & Co. part of the time since the year 1861, inclusive, to the year 1869, inclusive, and a part of said time in the name of Greeley & Gale and the balance of said time in the name of C. S. Greeley, and since said year 1869 either in the name of one of said parties or their grantees or of unknown owners, and never since the year 1860 in the name of the defendant herein or of said Adolph Wehrman.

Your orators further aver that the defendant herein makes claim to the said premises under and by virtue of the said pretended conveyance to him of said land by said Adolph Wehrman, and that said claim constitutes a cloud on the title of these orators to the said land; that your orators are in the actual occupancy and possession of said land, as hereinbefore set out; that the defendant herein, for the purpose of injuring your orators and disturbing them in their said peaceable possession of said premises, has commenced an action in this court, on the law side thereof, in ejectment against your orators, and in which said action the defendant herein claims to be the absolute owner of said premises under the said pretended deed from said Adolph Wehrman to him; that said action is now pending in this court; that although the said defendant herein is now barred and estopped from his long silence and laches and, by reason of the matters and things hereinbefore fully set out, from now being permitted to assert any title or claim to said premises, yet your orators cannot set up and plead such laches and equitable estopp*le* against said defendant herein in the said law action, but are compelled to resort to a court of equity in order to protect fully their title against the said claim of the defendant herein to said land.

All of which actings, doings, and pretences of the said defendant, Frederick Wehrman, are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in *the* honorable court, where matters of this nature are properly cognizable and relievable, to the end, therefore, that proceedings in said law action now pending in this court may be stayed until the determination of the rights of the parties to the land in suit under this bill, may it please your honors to grant to your orators not only the most gracious writ of injunction issuing out of and under the seal of this honorable court to be directed to the said Frederick Wehrman to restrain him from proceeding at law against your orators touching any of the matters in question, and that your orators may be decreed by this honor-

able court to hold the said land free and clear from all claims made thereto by said defendant, *and* may it also please your honors to grant unto your orators a writ of subpœna of the United States of America to be directed to the said Frederick Wehrman, thereby commanding him, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court and then and there to answer all and singular the premises, not under oath, and to stand to, perform, and
14 abide such further order, direction, and decree as may be made against him.

And your orators, as in duty bound, will ever pray, *ect.*

E. C. HERRICK,
Solicitor for Complainants.

W. L. JOY,
WARREN WALKER,
Of Counsel.

UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

T. B. Conklin, being duly sworn, deposeth and saith that he is one of the complainants in the foregoing bill named, and has read the same and knows the contents thereof.

The the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and except — to those matters and things concerning the proceedings and the records of proceedings in the said attachment suit and suit in equity set out and referred to in said bill, and the said tax sale and sale of said land on said judgment of Greeley, Gale & Co., all of which said matters and things are by complainants stated in said bill on information and belief of this complainany, and as to each of those he believes said bill to be true.

T. B. CONKLIN.

Subscribed in my presence and sworn to before me by the said T. B. Conklin this the 23rd day of April, 1889.

[SEAL.] WARREN WALKER,
Notary Public.

15 EXHIBIT "A."

This deed made this seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, between Adolph Wehrman and Augusta Wehrman, his wife, of the county of Pierce and State of Wisconsin, of the first part, and Frederick Wehrman, of the county of Pierce and State of Wisconsin, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of three thousand dollars, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey and confirm unto the said party of the second part, his heirs and assigns forever, all

the following-described lots or parcels of land lying and being in the county of O'Brien and State of Iowa, to wit:

All of section twenty-nine and all of section twenty-three, and the west half of the southwest quarter, and the west half of the southeast quarter section nineteen, and the west half of the southwest quarter of section twenty, township number ninety-six north, range thirty-nine west, and also the southeast quarter of section twenty, township number ninety-seven north of range forty west, and the east half of section thirty and the southeast quarter of section nineteen, township ninety-six north of range forty-one west, containing two thousand one hundred and sixty acres more or less. To have and to hold the same together with all and singular the appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity to the only proper use, benefit and behoof of the said party of the second part, 16 his heirs and assigns forever. And the said Adolph Wehrman, his heirs and executors and administrators do covenant and agree with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above described as of a good, sure, perfect and indefeasible estate of inheritance in the law in fee simple, and that the same are free and clear from all incumberance whatsoever, and that the above-bargained premises in the quiet and peaceable possession of the party of the second part, his heirs and assigns against all and every person or persons, lawfully claiming the whole or any part thereof he will warrant and defend.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

ADOLPH WEHRMAN. [SEAL.]
AUGUSTA WEHRMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—

AUGUST FORSTER.
JAS. D. WHITE.

STATE OF WISCONSIN, } ss:
County of Pierce, }

Be it remembered that on the seventh day of December, A. D. 1859, personally came before me the above-named Adolph Wehrman and Augusta, his wife, to me known to be the persons who executed the above deed, and acknowledged the same to be their free act and deed for the purposes therein mentioned. Given under my hand.

JAMES D. WHITE,
Notary Public for said County. [SEAL.]

STATE OF WISCONSIN, } ss:
County of Pierce, }

I, A. H. Young, clerk of the circuit court in and for the county and State aforesaid, — court being a court of record having common-law jurisdiction and a clerk and seal, do certify that
17 Jas. D. White, whose name is affixed to the above certificate of acknowledgment, was at the date thereof an acting notary public, as he is therein represented, and I believe the signature of the said Jas. D. White as thereunto affixed is genuine, and that the said instrument is executed according to the laws of the State of Wisconsin.

In witness whereof I have hereunto set my hand and affixed the seal of the circuit court, at the city of Prescott, this nineteenth day of December, A. D. 1859.

A. H. YOUNG,
Clerk of the Circuit Court. [SEAL.]

Filed for record Jan'y 2nd, 1860, at 9 o'clock a. m.
CHAS. E. HEDGES, *Recorder.*

EXHIBIT "B."

STATE OF IOWA, } ss:
O'Brien County, }

In District Court for said County, — Term, 1861.

GREELEY, GALE & Co. }
vs.
ADOLPH WEHRMAN. }

To the honorable judge of the fourth judicial district of Iowa:

Your petitioners, Greeley, Gale & Co., claim of Adolph Wehrman, defendant, the sum of one thousand six hundred and seventy-five dollars, and — cause of such claim state that on or about the 12th day of May, A. D. 1860, a judgment was duly made and rendered by the circuit court in and for Pierce county, in the State of Wisconsin, in favor of Carlos S. Greeley, Daniel B. Gale, and Syrus B. Burnham, doing business under the firm name and style of Greeley, Gale & Co., and against said defendant, Adolph
18 Wehrman, for the sum of one thousand nine hundred and forty-two and $\frac{90}{100}$ dollars and thirty-eight and $\frac{58}{100}$ dollars costs, together with accruing interest, a true copy of which judgment is hereto attached and made a part of this petition; that there now remains due and unpaid to your petitioners on said judgment the sum of one thousand six hundred and seventy-five dollars, for which sum, with interest and costs, your petitioners ask judgment.

Your petitioners further represent that said Adolph Wehrman is a non-resident of Iowa.

Wherefore your petitioners ask for a writ of attachment against the property of said Wehrman.

GREELEY, GALE & CO.,
By P. ROBB, *Att'y.*

STATE OF IOWA, }
Woodbury County, } ss:

I, P. Robb, being duly sworn, depose and say that a duly certified transcript of the judgment above sued on is in my possession, and that the matters and things set forth in the above petition are true as I verily believe.

P. ROBB.

Subscribed and sworn to before me this 10th day of January, A. D. 1861.

[Notarial Seal, George Weare, Sioux City, Woodbury County, Iowa.]

GEORGE WEARE,
Notary Public.

(EXHIBIT "A" OF PETITION ATTACHED.)

Part of Exhibit "B" being Exhibit "A" of petition.

19 Pierce County Circuit Court.

CARLOS S. GREELEY, DANIEL B. GALE, and Cyrus Burnham, Partners Doing Business under the Firm Name and Style of Greeley, Gale & Co.,
against
ADOLPH WEHRMANN & AGUSTE WEHRMANN. } May Term, 1860.

Present: Hon. S. S. N. Fuller, circuit judge.

On reading and filing the certificate of Henry P. Ames, sheriff of Pierce county, proving the service of the summons and complaint in this action, and the affidavit of H. A. Jay that no answer had been put in nor appearance entered by either of the defendants, and that they are neither of them absentees, and that notice of the pendency of this action in due form was filed in the office of the register of deeds in and for said county on the 17th day of December, 1859, and the proper order having been made to compute the amount due to the plaintiffs on said notes and mortgage, and the same having been duly made by I. S. White, who was sworn in open court for that purpose, whereby it appears that there is now due the plaintiffs thereon the sum of nineteen hundred and forty-two $\frac{90}{100}$ dollars, and on motion of I. S. White and Jay, attorneys for the plaintiffs, it is adjudged that the mortgaged premises described in the complaint in this action as hereinafter set forth, or so much thereof as may be necessary and as may be sold separately without prejudice to the interest of the parties thereto, be sold at public auction in the said county of Pierce by P. V. Wise, Esq., referee for that purpose by the court appointed; that said referee give public notice of the time and place of such

sale according to the law and the practice of this *of*
20 *this* court; that either or any of the parties may purchase at such sale; that the said referee execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the monies arising from such sale, after deducting the amount of his fees and expenses on such sale and any lien or liens upon said premises so sold at the time of such sale for taxes or assessments, the said referee pay to the plaintiffs or their attorneys the sum of thirty-eight dollars and eighty-five cents, adjudged to the plaintiffs for costs and charges in this action, with interest from the date thereof, and also the amount so found due as aforesaid, together with the legal interest thereon from the date hereof or so much thereof as the purchase-money of the mortgaged premises will pay of the same, take a receipt therefor and file it with the report of sale; that he deposit the surplus money, if any, in the City Bank of Prescott subject to the order of the court immediately after he receives the same; that he make a report of such sale and file it with the clerk of this court with all convenient speed; that if the proceeds of such sale be not sufficient to pay the amount so reported due the plaintiffs, with interest and costs as aforesaid, the said referee specify and report the amount of such deficiency in his report of sale, and that the defendant Adolph Wehrmann be adjudged to pay the same to the plaintiffs, and that the purchaser or purchasers at such sale be let into possession on production of the referee's deed and certified copy of the order confirming the report of sale; and it is further adjudged that the defendants and all persons claiming under them or either of them after the filing of said notice of pendency of this action be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold or any part thereof.

21 The following is a discription of the mortgaged premises hereinbefore mentioned, to wit:

Lot No. four (4), in block B, in the village of Prescott, in said county.

By the court:

S. S. N. FULLER,
Circuit Judge.

STATE OF IOWA, }
O'Brien County, } ss:

I, H. C. Tiffey, clerk of district court for O'Brien county, do hereby certify that the within petition is the original filed in my office on the 14th day of January, 1861.

Witness my hand and the seal of the said court this 27th day of August, 1861.

"No seal having been procured." [SEAL.]

H. C. TIFFEY,
Cl'k Dis. Ct.

(Indorsements on back of petition:) In district court. Greeley, Gale & Co. *vs.* Adolph Wehrman. Petition. Filed January 14th, 1861. H. C. Tiffey, D. C. Pat. Robb, att'y for plaintiffs. Filed September 2nd, 1861. J. N. Field, clerk.

22 EXHIBIT "C."

STATE OF IOWA, } ss:
O'Brien County, }

To the sheriff of said county, Greeting:

Whereas Greeley, Gale & Co. have filed their petition under oath in the office of the clerk of the district court of said county stating that Adolph Wehrman is justly indebted to them in the sum of one thousand six hundred and seventy-five dollars, and as deponent verily believes that said Adolph Wehrman is a non-resident of Iowa, and asking that a writ of attachment may issue against the goods, chattels, lands, tenements, and effects of Adolph Wehrman, or so much thereof as may be necessary to secure the said sum of $1,675.00 *dollars*, and the said Greeley, Gale & Co. having also filed their bond in the sum of $5,000.00 *dollars*, conditioned that said Greeley, Gale & Co. will pay all damages which the said Adolph Wehrman may sustain by reason of the wrongful suing out of this writ of attachment:

Therefore these are, in the name of the State of Iowa, to command you to attach the lands, tenements, goods, rights, credits, moneys, and effects of the said Adolph Wehrman wheresoever the same may be found in your county, or so much thereof as may be necessary to satisfy the above-stated indebtedness, together with interest and costs of writ, and safely preserve the same to be dealt with according to law, and make legal return of your doings in the premises to the district court of said county on the first day of the next term thereof, to be holden at the court-house, in said county, on the 3rd day of June, A. D. 1861.

In testimony whereof I, H. C. Tiffey, clerk of said court, have hereunto subscribed my name and affixed the seal of said court, at my office, in —, this 14th day of January, A. D. 1861.

23 H. C. TIFFEY, *D. C.*

No seal having been procured. [SEAL.]

(Indorsement on back.)

Received this writ of attachment at 10 o'clock a. m. January 14th, A. D. 1861, and served the same on the same day by attaching all the right, title, and interest of Adolph Wehrman in and to the following-described premises, in O'Brien county, Iowa, and attaching the same as the property of Adolph Wehrman, he having purchased the same at the land office at Sioux City, Iowa, of United States:

All of section.....	29	96	39	All of section.....	33	96	39
W. ½ of s. w. ¼.....	19	96	39	W. ½ of s. e. ¼.....	19	96	39
S. e. ¼.....	20	97	40	E. ½.....	30	96	41
S. e. ¼.....	19	96	41	W. ½ of s. w. ¼.....	20	96	39

No other property of Adolph Wehrman in my bailiwick, and herewith duly make return of same.

A. MURRY,
Sheriff of O'Brien County, Iowa.

24 EXHIBIT "B 1."

Circuit Court, Pierce County.

CARLOS B. GREELEY, DANIEL B. GALE, and Lyrus B. Burnham, Partners Doing Business under the Firm Name and Style of Greely & Gale,
against
ADOLPH WEHRMAN.
} Summons for Relief.

The State of Wisconsin to the above-named defendant:

You *and each of you* are hereby summoned and required to answer the complaint of the above-named plaintiff-, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers at their office, in the city of Prescott, in said county, within ninety days after the service hereof, exclusive of the day of such service, and if you — to answer such complaint as hereby required the plaintiff- will apply — the court for their relief demanded in complaint.

Witness the Hon. S. S. N. Fuller, judge, at Prescott, Dec. 16th, 1859.

I. S. WHITE & JAY,
Pl'ff' Att'y-.

STATE OF WISCONSIN, } ss:
Pierce County, }

I certify that I served the within summons and complaint on the within-named Adolph Wehrman by delivering to him true copies thereof on the 17th day of December, A. D. 1859, in the city of Prescott.

H. P. AMES — *of Pierce Co.,*
By E. N. REDMON, *Deputy.*

Fees, $2.55.

25 EXHIBIT "B 2."

Circuit Court.

C. S. GREELEY, D. B. GALE, and C. BURNHAM, Partners, &c.,
against
ADOLPH WEHRMAN & A. WEHRMAN.

On reading and filing the report of P. V. Wise, referee appointed to make sale herein of the *sale of the* mortgaged premises in this case, whereby it appears that there remains due and unpaid, after applying the whole of the purchase-money received on said sale, a deficiency of one thousand six hundred and forty and $\frac{33}{100}$ dollars, and on motion of White & Jay, attorneys for the plaintiffs, ordered that the same be confirmed unless cause be shown to the contrary thereof within eight days from the entry of this order, and that

plaintiffs have leave to docket judgment and have execution therefor.

Dated Sept. 12th, 1860.

A. H. YOUNG, *Clerk.*

J. S. WHITE & JAY,
Plaintiffs' Att'ys.

26 EXHIBIT "B 3."

Attorneys: White & Jay.

Parties: C. S. Greeley, D. B. Gale, and C. Burnham, *parties*, &c., plaintiffs; Adolph Wehrman, Auguste Wehrman, defendants.

Against whom judgment rendered: Adolph Wehrman.

Amount of judgment: $1,640.33.

Date of rendition: Docketed September 12th, 1860, at 3 o'clock p. m.

27 EXHIBIT "D."

To Adolph Wehrman.

SIR: You are hereby notified that on or before the twentieth day of January, A. D. 1861, there will be on file in the office of the clerk of the district court of O'Brien county, Iowa, a petition of Greeley, Gale & Co., claiming of you the sum of one thousand six hundred and seventy-five ($1,675.00) dollars as money due them on a judgment rendered against you in their favor by the circuit court of Pierce county, State of Wisconsin, in May, A. D. 1860.

You are further notified that a writ of attachment has issued against your property in accordance with the prayer of said petition, and unless you appear and answer thereto on or before noon of the second day of the next term of said court, on the first Monday of June, A. D. 1861, to be holden at Waterman, in and for said county, default will be entered against you and judgment rendered thereon.

P. ROBB,
Attorney for Plaintiffs.

STATE OF WISCONSIN, }
Pierce County, } *ss:*

I, John B. Freeman, being duly sworn, depose and say that the within notice came into my hand on the 25th day of January, A. D. 1861, and that I served the same on the within-named Adolph Wehrman on the 25th day of January, A. D. 1861, at his residence, in the city of Prescott, by reading the same to him and delivering to him a true copy thereof.

(Signed) J. R. FREEMAN,
Sheriff of Pierce Co., Wis.

STATE OF WISCONSIN, } ss:
Pierce County, }

I, Smith R. Glenn, clerk of the circuit court in and for
28 said county and State, hereby certify that the above affidavit was subscribed and sworn to before me this 26th day of January, A. D. 1861, by John R. Freeman, who is to me personally known.

Witness my hand and the seal of said court, at Prescott, in said county, this 26th day of January, A. D. 1861.

[Seal Circuit Court Pierce County, Wisconsin.]

SMITH R. GLENN,
Cl'k Cr. C't.

Fees for service and affidavit.....	$1 75
Certificate of acknowledgment.....	25
Postage	12
	$2 12

STATE OF IOWA, }
O'Brien County. }

I, H. C. Tiffey, cl'k of the dist. court of O'Brien Co., do hereby certify that the within notice is the "original" one filed in my office April 23rd, 1861.

Witness my hand and the seal of the dist. court this 27th day of August, 1861.

[SEAL.] H. C. TIFFEY, *D. C.*

(Indorsement on back:) In district court. Greeley, Gale & Co. *vs.* Adolph Wehrman. Notice. Filed April 23rd, 1861. H. C. Tiffey, D. C. P. Robb, att'y for pl'ffs.

29 EXHIBIT "E."

STATE OF IOWA, } ss:
O'Brien County, }

GREELEY, GALE & Co. }
vs. } Attachment.
ADOLPH WEHRMAN. }

Comes now the plaintiffs in the above cause on this 14th day of January, A. D. 1861, and file their petition in this behalf.

And on this 23rd day of August, A. D. 1861, comes plaintiffs — file their motion for change of venue on words as follows, to wit:

STATE OF IOWA, } ss:
O'Brien County, }

GREELEY, GALE & Co. }
vs. }
ADOLPH WEHRMAN. }

Comes now plaintiffs in above cause, by P. Robb, att'y, and re-resents to this hon. court that there are not enough citizens in said O'Brien county to form a jury; wherefore plaintiffs ask a change of venue in above cause to the county of Woodbury.

GREELEY, GALE & CO.,
By PAT. ROBB, *Att'y.*

I, Pat. Robb, duly sworn, depose and say that the matters and things set forth above are true, as I verily believe.

P. ROBB.

Subscribed and sworn to before me by Pat. Robb this 13th day of Aug., A. D. 1861.

J. N. FIELD, *Clerk.* [SEAL.]

And therefore it is ordered by the court on this 13th day of August, A. D. 1861, as follows:

30 STATE OF IOWA, }
4th Judicial District. }

GREELEY, GALE & Co. }
vs. }
ADOLPH WEHRMAN. }

It being proven to my satisfaction by the affidavit of P. Robb that a jury of twelve men cannot be obtained in O'Brien county—the county in which said action has been commenced and where the same is now proceeding—and that said plaintiffs desire a change of venue, it is now here ordered that said cause be transferred for trial and that the venue be changed from O'Brien county to Woodbury county and that the clerk of the O'Brien district court is ordered to transmit the papers in said cause according to law.

Given under my hand this 13th day of August, 1861.

A. W. HUBBARD,
Judge 4th Judicial District, Iowa.

I, H. C. Tiffey, clerk of O'Brien county district court, certify that the above is a true and correct copy of the proceedings in above cause, as appears of record in my office.

Witness my hand and seal this 27th day of August, A. D. 1861.

[SEAL.] H. C. TIFFEY,
Clerk of District Court, O'Brien County.

31 EXHIBIT "F."

GREELEY, GALE & Co. } Judgment. No. 41.
vs.
ADOLPH WEHRMAN. }

Now, on this 17th day of September, 1861, it being the second day of the regular term of said September term of court, and on the afternoon of said day, comes the plaintiffs in this behalf, by their attorney, and it appearing to the satisfaction of the court by the return of the original notice that the defendant had been duly notified of the pendency of this action at least twelve days prior to the present term of court, and the said defendant, being three times audibly called in open court, comes not, but makes default:

Therefore, on motion of the plaintiffs, it is considered by the court that said plaintiffs have and recover of said defendant the sum of eighteen hundred and nine dollars and forty cents, the amount appearing due on the judgment described in plaintiffs' petition, and also *his* costs and charges, taxed at the sum of six dollars and sixty-two cents; and it is further ordered that the property mentioned and described in the writ of attachment issued in this behalf should be sold to satisfy the same.

Judgment docket No. 1, D. court Woodbury county, Iowa, page 198:

Defendants in judgment, Adolph Wehrman.
Plaintiffs in judgment, Greeley, Gale & Co.
Date of judgment, Sept. 17, 1861.
Amount of judgment, $1,809.48.
Costs, $6.62.

Execution issued to sheriff of O'Brien county June 16th, 1862; ret. August 11th, 1862. This judgment was paid in full July 31st, 1862.

EXHIBIT "G."

Judgment Docket "A," Page 1, O'Brien County.

Names of parties.	Date of judgment.			Am't of judgment.	Amount of costs.
	Month.	Day.	Year.		
Greeley, Gale & Co. *vs.* Adolph Wehrman }	September.	17	1861	$1,809 48	$6 62

Transcript of judgment in the above case from the clerk of the Woodbury dist. court. Filed in this office Dec. 12th, 1861. Gen. index lien.

Satisfaction of Judgment.

Rec'd on this judgment by sale of property under a special execution from Woodbury Co. the sum of $1,930.39. See Deeds Record "A," page 510, and "D," 367, of O'Brien county records, which show a sale of land of Adolph Wehrman's to one Carlos S. Greeley for the sum above specified. Receipt filed April 28th, 1881: In consideration of the sum of one thousand nine hundred and thirty and $\frac{50}{100}$ dollars to us in hand paid we do hereby release the same (this judgment) & interest, the clerk of the courts, O'Brien Co., I., to enter full satisfaction of the above-entitled judgment.

GREELEY, GALE & CO., *Plaintiff*.

See receipt on file.

W. N. STRONG, *Clerk*.

32 EXHIBIT "H."

GREELEY, GALE & Co.
vs.
ADOLPH WEHRMAN, AUGUSTA WEHRMAN, & F. WEHRMAN. } Chancery.

Now, on this afternoon of the second day of the June term, A. D. 1862, of the O'Brien coutny district court, the above cause coming on for trial and defendants having failed to plead, answer, or demur to plaintiffs' petition, and defendants, Adolph Wehrman, Augusta Wehrman, and F. Wehrman, being three times audibly called, came not, but make default therefrom, the court, after due examination of the notice and return in the above cause, finds each and all of said defendants have been duly notified by personal service of the pendency of this action now then sixty days prior to the commencement of this term of court, and therefore said cause is submitted to the decision of the court, and the court, upon due consideration of the pleadings and evidence in the case, finds that a certain deed of conveyance, made and executed by Adolph Wehrman and Augusta Wehrman to F. Wehrman on the 17th day of December, 1859, whereby *a* said Adolph Wehrman conveyed to F. Wehrman the following-described property, situate in O'Brien county, Iowa, to wit: All of section twenty-nine (29), township ninety-six, range thirty-nine (39); all of section thirty-three (33) & west half of southwest quarter (W. ½ S. W. ¼) and west half of southeast quarter (W. ½ S. E. ¼) of section nineteen (19), town. ninety-six (96), range thirty-nine (39); also west half of southwest quarter (W. ½ of S. W. ¼) of section twenty (20), town. ninety-six (96), range thirty-nine (39), & southeast quarter of section twenty (20), town. ninety-seven (97), range forty (40), & east half (E. ½) of section thirty (30) & southeast quarter of nineteen (19), in township ninety-six (96), — forty-one (41), was made without consideration and for the purpose on the part of all the parties thereto of defrauding plaintiffs and preventing them from collecting and making of said Adolph

Wehrman a certain claim and indebtedness set forth in plaintiffs' petition. Therefore the court considers, orders, adjudges, and decrees that said conveyance is wholly void, and that the same is hereby cancelled and set aside and declared to be of no validity, force, or effect whatsoever as against these plaintiffs; and it is further ordered, adjudged, and decreed that said lands be sold according to law as the property of Adolph Wehrman, and that the proceeds arising from such sale be applied in payment of a certain judgment in favor of plaintiffs and against said Adolph Wehrman and set *of*rth in plaintiffs' petition and rendered in the Woodbury county district court at the September term thereof, 1861, and said F. Wehrman is hereby barred and prevented from ever hereafter setting claim, right, or title to said property by virtue of said deed or conveyance; and it is further ordered that plaintiffs have and recover of Adolph Wehrman and F. Wehrman costs in this behalf, taxed at seven & $\frac{75}{100}$ dollars, and that execution issue therefor.

Read, approved, and signed this 10th day of June, 1862.

A. W. HUBBARD.

There being no further business, court is now adjourned till next term.

33 EXHIBIT "I."

Execution.

THE STATE OF IOWA, } ss:
Woodbury County, }

To the sheriff of O'Brien county, Greeting:

In the name of the State of Iowa you are hereby commanded that of the goods, chattels, rights, moneys, effects, lands, and tenements of Adolph Wehrman in your county, except such as are exempt by law from execution, you cause to be made the sum of one thousand eight hundred and nine dollars and forty-eight cents, principal, and six dollars and sixty-two cents, costs of suit, which by the judgment of our district court within and for the county of Woodbury, at the September term thereof, A. D. 1861, to wit, the seventeenth day of September, A. D. 1861, Greeley, Gale & Co. recovered against the said Adolph Wehrman, with interest thereon from the said seventeenth day of September, A. D. 1861, at the rate of six per cent. per annum until paid, together with the further sum of six & $\frac{20}{100}$ dollars and —, increase of costs, and also the costs that may accrue, and that you make return of this writ, with your proceedings in pursuance thereof, according to law.

Witness the undersigned, J. N. Field, clerk of the district court in and for said county, with the seal thereof thereunto affixed.

Done at Sioux City this 16th day of June, A. D. 1862.

[Seal of the District Court, Woodbury Co., Iowa.]

J. N. FIELD,
Clerk District Court, Woodbury County, Iowa,
By J. C. C. HOSKINS, *Deputy.*

(*Return on Execution.*)

STATE OF IOWA, } ss:
O'Brien County, }

I received the within execution on the 23rd of June, 1862, at 10 o'clock a. m., and served the same on the same day by levying on the following-described property of Adolph Wehrman in O'Brien county, Iowa, to wit: All of section- twenty-nine and thirty-three; also west half of southwest quarter of section nineteen and west half of southeast quarter of section nineteen; also west half of southwest quarter of section twenty, all in township ninety-six north, of range thrity-nine (39) west; also southeast quarter of section twenty, in township ninety-seven north, of range forty west; also E. ½ of section thirty (30), in township ninety-six north, of range forty west; also southeast quarter of section nineteen, in township ninety-six north, of range forty-one west, of fifth P. M.

There being no newspaper published in said O'Brien county, I advertised said property for sale by posting up written notices thereof in three public places in said county for more than four weeks prior to the day of sale, and in said notices specified that the sale would take place at public auction, in front of the door of the office of the clerk of the district court of O'Brien county, Iowa. in the 31st day of July, 1862, at 10 o'clock a. m., and in accordance with said notices I offered said property for sale in front of said clerk's office in O'Brien county, Iowa, on the 31st day of July, 1862, at ten o'clock a. m., and then and there Carlos S. Greeley, of St. Louis, Missouri, offered for said property eighty-nine and $\frac{4}{10}$ cents per acre, making in all the sum of one thousand nine hundred and thirty and $\frac{59}{100}$ dollars, the amount of judgment and costs, and, that being the highest and best bid offered, I accepted the same
34 and sold said property to Carlos S. Greeley for the aforesaid sum of $1,930.59.

(EXHIBIT "I"—Continued.)

Judgment	1,809	48
Costs	6	62
Interest	95	49
	1,901	59
Accruing costs	19	00
	1,930	59
Rec'd for land	1,930	59

Accruing Costs.

Issuing ex		50
Entering sheriff's sale, 2 counties	1	00
Discharge judgment, 2 Co.		50
Filing transcript, O'Brien county		50

Serving execution	50
Posting notices	1 50
One day, selling property	1 00
Commissions	13 50
	19 00

Witness my hand this 31st day of July, A. D. 1862.

GEORGE HOFFMAN,
Sheriff of O'Brien County, Iowa.

35 EXHIBIT "J."

Treasurer's Tax Deed to C. C. Orr.

Know all men by these presents that whereas the following-described real property, viz:

Part of section.	Sec.	Town.	Range.	Acres.
N w of n e	20	94	39	40
N w ¼	20	94	"	160
S ½ of n w	3	96	39	80
S w ¼	3	"	"	160
S ½ of n e ¼	4	"	"	80
E ½ of s w	7	"	"	80
W frc. ½ of s w	7	"	"	62
N e of s e	14	"	"	40
W ½ of s e	14	"	"	80
N ½ of n e	17	"	"	80
S e of n e	17	"	"	40
E ½ of n w	18	"	"	80
W frc. ½ of n w	18	"	"	62
E ½ of s w	18	"	"	80
W frc. ½ of s w	18	"	"	61
W frc. ½ of s w	19	"	"	61
W ½ of s e	19	"	"	80
W ½ of s w	20	"	"	80
W ½ of n e	21	"	"	80
N w	21	"	"	160
S e	21	"	"	160
E ½ of s e	23	"	"	80
All of sec.	29	"	"	640
N e	32	"	"	160
N w	32	"	"	160
S w	32	"	"	160
S e	32	"	"	160
All of sec.	33	"	"	640
E ½	34	"	"	320
N w	35	"	"	160

Exhibit "J"—Continued.

Part of section.	Sec.	Town.	Range.	Acres.
S ½ of n w	36	96	39	80
S w	36	"	"	160
N ½ of n w	2	96	41	80
N e	3	"	"	160
S e of n w	3	"	"	40
W frc. of n w	3	"	"	80
S e	4	"	"	160
W ½ of n w	7	"	"	70
W ½ of s w	7	"	"	67
S e of n e	10	"	"	40
N ½ of s w	10	"	"	5,130
36 S w of s w	10	96	41	40
E ½ of s e	10	"	"	80
S w	11	"	"	160
S ½ of s e	12	"	"	80
N w	14	"	"	160
S w	14	"	"	160
S w	15	"	"	160
S w n e	17	"	"	40
N w	17	"	"	160
W ½ s e of s w	17	"	"	120
S e	19	"	"	160
S e	22	"	"	160
N w	23	"	"	160
N w s e	"	"	"	40
S w	25	"	"	160
S e ¼	"	"	"	160
N w ¼	28	"	"	160
S w ¼	29	"	"	160
N e ¼	30	"	"	160
S e ¼	"	"	"	160
W frc. ½ of n w	31	"	"	66
W frc. ½ of s w	"	"	"	67
N w ¼	34	"	"	160
S w of n w	36	"	"	40
N frc. ½ of n e	1	97	39	60
N frc. ½ n w	"	"	"	60
S w n e	4	"	"	40
S e n e	"	"	"	40
N e of n e	10	"	"	40
N e	11	"	"	160
N ½ s e	"	"	"	80
S e of s e	"	"	"	40
N e n e	12	"	"	40
S w ¼	12	"	"	160

Exhibit "J"—Continued.

Part of section.	Sec.	Town.	Range.	Acres.
N e ¼	13	97	39	160
N w ¼	"	"	"	160
W frc. ½ s w	19	"	"	64
E ½ of s e	"	"	"	80
N w	20	"	"	160
W ½ s w	"	"	"	80
E ½ of s e	21	"	"	80
37 W ½ s w	22	97	39	80
All sec.	23	"	"	640
N w ¼	30	"	"	160
W ½ s w	"	"	"	80
W frc. ½ n w	31	"	"	65
S w ¼	35	"	"	160
W ½ n w	36	"	"	80
S w ¼	3	97	40	160
S w of n w	4	"	"	40
S e of n w	"	"	"	40
W ½ n e	5	"	"	80
S e of n e	"	"	"	40
N ½ n w	"	"	"	80
S e s w	"	"	"	40
N ½ n e	6	"	"	80
N ½ n w	"	"	"	80
S w n w	6	"	"	40
N w s w	6	"	"	40
N ½ s e	6	"	"	80
N e ¼ n e	9	"	"	40
N ½ n e	12	"	"	80
N ½ n w	12	"	"	80
S w ¼ n w	12	"	"	40
N w ¼ s w	12	"	"	40
S w ¼ s w	12	"	"	40
N w	13	"	"	160
N e ¼	17	"	"	40
S e	17	"	"	160
S ½ n e	20	"	"	80
S e	20	"	"	160
S e s w	24	"	"	40
S ½ s e	24	"	"	80
N e	25	"	"	160
N e	27	"	"	160
N w	27	"	"	160
E ½ s w	30	"	"	80
S e	30	"	"	160
N ½ n e	1	97	41	80

Exhibit "J"—Continued.

Part of section.	Sec.	Town.	Range.	Acres.
W ½ s e	1	97	41	80
N w of n e	3	"	"	40
N ½ n w	3	"	"	80
N e s w	10	97	41	40
W ½ s w	10	"	"	80
N e	13	"	"	160
N w	13	"	"	160
S e	13	"	"	160
N e of n w	17	"	"	40
S ½ of n w	17	"	"	80
N e	18	"	"	160
N e	21	"	"	160
38 N e	23	97	41	160
S w	24	"	"	160
N w	25	"	"	160
S e	25	"	"	160
S ½	26	"	"	320
W ½ n e	28	"	"	80
E ½ n w	31	"	"	80
E ½ s w	31	"	"	80
N e of n e	32	"	"	40
W ½ n e	32	97	41	80
N w	32	"	"	160
N ½ s w	32	"	"	80
S e of s w	32	"	"	40
N w of s e	32	"	"	40
S ½ s e	32	"	"	80
W ½ s w	33	"	"	80
S e of s e	35	"	"	40

situated in the county of O'Brien and State of Iowa, was subject to taxation for the year A. D. 1858 & 1859; and whereas the taxes assessed upon said real property for the years aforesaid remained due and unpaid at the date of the sale hereinafter named; and whereas the treasurer of the said county did on the 22nd day of December, 1860, by virtue of the authority in him vested by law at an adjourned sale begun and publicly held on the first Monday of October, A. D. 1860, expose to public sale at the court-house, in O'Brien county aforesaid, in substantial conformity with all the restrictions of the statutes in such cases made and provided, the real property above described for the payment of the taxes, interest, and costs then due and remaining unpaid on said property; and whereas at the time and place aforesaid Chas. C. Orr, of the county of Woodbury and State of Iowa, having offered to pay the sum of

fourteen hundred forty-eight dollars & sixty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property for the whole of each said tracts of land, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas three years has elapsed since the date of said sale and the said property has not been redeemed therefrom as provided by law:

Now, therefore, I, A. Murray, treasurer of the aforesaid county, for and in consideration of the said sum to the treasurer paid as aforesaid and by virtue of the statute in such cases made and provided, having granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Chas. C. Orr, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said Chas. C. Orr, his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

In testimony whereof I, A. Murray, treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this 28th day of June, A. D. 1866.

A. MURRAY, *Treasurer.*

39 STATE OF IOWA, } ss:
O'Brien County, }

I hereby certify that before me, John More, dist. clerk in and for said county, personally appeared the above-named A. Murray, treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to the same to be his voluntary act and deed as treasurer of said county for the purpose therein expressed.

Given under my hand and seal this 28th day of June, A. D. 1866.

[CLERK'S SEAL.] JOHN MORE, *Dist. Clerk.*

Filed the 7th day of July, A. D. 1866.

A. MURRAY, *Recorder.*

STATE OF IOWA, } ss:
O'Brien County, }

I, Isaac Clements, do hereby certify that I am the recorder of O'Brien county, Iowa, and the custodian of the records of said county, and that the above and foregoing is a true and complete copy of the record of the treasurer's tax deed from the treasurer of said county to Chas. C. Orr, recorded in the deed record of said county, in Book "B," on pages 147, 148, and 149 of said book, and that I have compared the same with the original record, and the same is as near an exact copy as can be made with type.

Witness my hand, at Primghar, Iowa, this 27th day of February, A. D. 1887.

ISAAC CLEMENTS,
Recorder of O'Brien County, Iowa.

40 [Endorsed:] No. 93. T. B. Conklin *et al.*, complainants, *vs.* Frederick Wehrman, defendant. Bill of complaint. U. S. circuit court, northern district of Iowa, western division. Filed Apr. 27th, 1889. A. J. Vanduzee, clerk, by J. H. Bolton, d'p'ty.

41 And afterwards, to wit, May 9th, A. D. 1889, there was filed in the office of the clerk of said court a demurrer in said cause; which said demurrer is in words and figures as follows, to wit:

42 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. B CONKLIN *et al.*, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.

The Demurrer of the Defendant, Frederick Wehrman, to the Bill of Complaint of T. B. Conklin and E. F. Conklin, Complainants.

This defendant, Frederick Wehrman, by protestation, not confessing any or all of the matters or things in said complainants' bill contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for causes of demurrer shows—

That the complainants have not by their said bill made such a case as to entitle them in a court of equity to any discovery from this defendant or any relief against him as to the matters contained in the said bill or any of such matters, nor do the complainants pray in or by their said bill for any relief from a court of equity.

That the said bill contains not any matter of equity whereon this court can ground any decree or give the complainants any relief.

That the said complainants do not show in or by their said bill a valid judgment or any judgment whatever against this defendant's grantor, Adolph Wehrman, nor against the land described in said bill, in this:

1. That the petition in the said suit against Adolph Wehrman purports to set out a judgment, a copy of which it is alleged
43 is annexed to said petition, and the copy so annexed is in no sense a judgment against the said Wherman nor an adjudication against him for the payment of any amount whatever, and the original notice therein is solely of a suit upon a judgment rendered in May, 1860.

2. The said petition in the suit against Adolph Wehrman is not sufficiently verified, as required by law, to authorize the issuance of

a writ of attachment against said Adolph Wehrman or against his property, and the action of the clerk of the court in issuing said writ was in violation of the law, and said writ is accordingly absolutely void.

3. The writ of attachment issued in said suit against Adolph Wehrman was not under the seal of the court wherein said suit was brought and prosecuted, and was therefore void, and the levy thereunder was void and conferred no jurisdiction upon the court to enter judgment against said Wehrman or against the land attached, the said Wehrman being then a non-resident of Iowa, and not being personally served with process in said suit in the State of Iowa.

4. The transfer of the alleged suit against Adolph Wehrman from O'Brien county to Woodbury county was without authority of law and void, in that no jurisdiction at the time of said transfer had been acquired over Adolph Wehrman or over the property purporting to be attached, and because the affidavit for the change of venue after continuance of said action did not show that the reason for which a change was demanded was not known to the plaintiffs at the time of such continuance.

5. The transcript from the district court of Iowa within and for O'Brien county to the district court of Iowa within and for Woodbury county was not under the seal or verified by the seal of the district court of O'Brien county, and the district court of Woodbury county therefore acquired no jurisdiction in the case, and its judgment therein was and is void.

44

6. The judgment rendered against said Adolph Wehrman by the district court of Iowa within and for Woodbury county was strictly a judgment *in personam* and in no sense a judgment *in rem* or against the land attached, nor did it order the sale of the land attached. The said court was without jurisdiction to enter a judgment *in personam* or any judgment whatever in said action, for all of the reasons hereinbefore set forth.

That the said complainants do not show in or by their said bill a valid execution sale of land described in said bill, in this:

1. That the judgment was void for the reasons hereinbefore set forth.

2. That the land is shown to have been sold upon a general execution issued against Adolph Wehrman *in personam* and not upon a special execution upon a judgment *in rem* against the land, and said execution was therefore void.

3. The sheriff's return upon the execution shows that the land was sold in bulk for a single lump sum without being exposed for sale in separate subdivisions or parcels, as required by law, and this sale was accordingly void; that the pretended decree in the suit against this defendant is void because there was no attachment or judgment to enforce against the land and because the court had no jurisdiction to enter a decree *in personam* therein.

That the said complainants have not shown in or by their said bill a valid tax title to the lands therein described in themselves or in their grantors, for that said tax title is shown in and by said bill

to be based upon a transcript of taxes from the authorities of Woodbury county to the authorities of O'Brien county, and the sale of the lands upon such transcript was wholly without authority
45 of law, in violation of law, and void.

The complainants have not shown in or by their said bill any matter or thing which estops or bars this defendant in a court of equity from asserting and maintaining his title to the lands described in the bill—

For that if the title set up by cemplainants in their said bill is valid or if the alleged bar of the statutes of limitations therein pleaded is of any force or effect the complainants have a plain, speedy, and adequate remedy at law by asserting such title, and the pretended bar of the statutes of limitations is a defense in the action at law brought by this defendant and now pending against said complainants in this honorable court to recover said lands, whereas if said title is valid or if the bar of these statutes of limitations is of no force this court can afford the complainants no relief touching the same.

Wherefore and for other and divers good causes of demurrer appearing in the said bill this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be dismissed from hence with his reasonable costs in this behalf sustained.

CHAS. A. CLARK,
Solicitor and of Counsel for Defendant.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

CHAS. A. CLARK,
Of Counsel for Defendant.

45½ & 46 It is agreed between the parties that the above demurrer may be heard and filed without being formally set down for argument and without an affidavit that the said demurrer is not interposed for delay.

E. C. HERRICK,
W. L. JOY,
WARREN WALKER,
Solicitors for Complainants.
J. W. BULL,
CHAS. A. CLARK,
Solicitors for Defendant.

47 [Endorsed:] T. B. Conklin *et al. vs.* Frederick Wehrman. Demurrer to bill. Filed May 9, 1889. A. J. Vanduzee, clerk. Chas. A. Clark, for dep't.

48 And afterwards, to wit, June 14th, 1889, there was filed in said cause the opinion of the court on said demurrer; which opinion is in words & figures as follows, to wit:

In the United States Circuit Court in and for Northern District of Iowa, Western Division, May Term, 1889.

T. B. CONKLIN *et al.*
vs.
FREDERICK WEHRMAN. } Equity.

Bill to quiet title to realty and enjoin actions in ejectment. Demurrer to bill.

E. C. Herrick, W. L. Joy, Warren Walker, for complainants.
J. W. Bull, Chas. A. Clark, for defendant.

SHIRAS, *J.:*

The defendant herein, Frederick Wehrman, brought several actions in ejectment on the law side of the court against the several complainants herein, claiming to be the owner of and entitled to the possession of certain realty situated in O'Brien county, Iowa.

Thereupon the complainants filed a bill in equity, asking that the action at law be stayed until the hearing upon the bill, and setting for- the various matters upon which equitable relief is sought.

To this bill a demurrer was filed and the questions thereby presented have been very ably argued by counsel.

From the allegations of the bill it appears that on the 1st day of December, 1859, one Adolph Wehrman, the father of defendant, received a patent from the United States covering the land in question, and on the 17th day of December, 1859, he executed a conveyance of some two thousand and sixty acres to the defendant,
49 which conveyance was placed upon record.

On the 14th day of January, 1861, the firm of Greeley, Gale & Co. commenced an action in the district court of O'Brien county, Iowa, against Adolph Wehrman, based upon a judgment obtained in the circuit court of Pierce county, Wisconsin, in the sum of $1,940.30, and dated May 12, 1860, and which in turn was based upon the notes of said Adolph Wehrman executed prior to December, 1859.

The said Adolph Wehrman being a non-resident of Iowa, a writ of attachment was issued in the suit brought to O'Brien county and was levied upon the realty, notice of the pendency of the action being served upon Wehrman personally in Pierce county, Wisconsin.

Upon application of plaintiffs in the attachment suit the same was removed to Woodbury county, and at the September term, 1861, of the district court in the latter-named county a judgment by default was rendered against Adolph Wehrman, and the property attached was ordered to be sold in satisfaction of the judgment.

At the June term, 1862, of the district court of O'Brien county the plaintiffs in said attachment proceedings filed a petition in equity against the said Adolph Wehrman and Frederick Wehrman, setting for- the prior proceedings, the rendition of the judgment in the attachment case, and averring that the conveyance of the land

from Adolph to Frederick was fraudulent and void as against creditors, being made without consideration and for the purpose of defeating the collection of the debt due said firm of Greeley, Gale & Co., and praying that such conveyance be set aside and annulled and the realty be decreed to be subject to the lien of the judgment in the attachment suit.

Notice of this proceeding in equity was served personally upon each of the Wehrmans in the State of Wisconsin in accord-
50 ance with the provisions of the Iowa statute, and at said June term, 1862, a decree by default was entered declaring the conveyance to Frederick Wehrman to be void and that the realty was subject to sale under said execution issued in the attachment case against Adolph Wehrman.

In pursuance of this decree the land was sold upon the execution and purchased by Carlos S. Greeley. On the 31st of December, 1864, a sheriff's deed was executed to the purchaser and duly recorded.

It is also averred that the land in question was subject to taxation for the years 1858 and 1859; that Wehrman neglected to pay the taxes; that the lands were sold for the delinquent taxes assessed thereon in Woodbury county, to which O'Brien county was then attached, the sale taking place in O'Brien county on the 22d of December, 1860; that the same were sold to C. C. Orr, to whom a tax deed was executed on the 28th day of June, 1866, and recorded July 7th, 1866; that on the 6th day of May, 1871, the said Orr executed to said Carlos S. Greeley a quitclaim deed of said realty; that the present complainants claim title under said Greeley, the several conveyances thereof being set forth in the bill; that complainants have, since the purchase of the land for value, in 1881, 1882, and 1884, been in the open and notorious possession of the realty, putting the same under cultivation and erecting thereon substantial buildings and making other valuable improvements; that when the sale of the realty was had to the said Greeley the lands were wholly unimproved and of little value; that the said Adolph Wehrman, by the satisfaction of the judgment against him, received the fair value of the lands at that time; that by the improvements since put upon the same the value thereof has been greatly increased; that neither Adolph nor Frederick Wehrman have ever paid any
51 taxes upon said lands, but that the same, from the date of the entry thereof, in 1859, to the present time, have been paid by complainants or those under whom they claim title; that although said Frederick Wehrman had actual notice of the proceedings affecting said realty and the title thereof he never sought to set the same aside, nor did he make claim to the land, nor did he perform any of the duties nor assert any of the rights of an owner of such realty, and for twenty-seven years allowed the lands to remain without asserting any interest therein, and that he is by his own laches equitably estopped from asserting any informalities or objections in and to the several proceedings under which complainants claim title or from asserting a claim to the realty.

In support of the demurrer it is urged that, upon the face of the

bill and the exhibits made part thereof, it appears that the writ of attachment issued in the action against Adolph Wehrman was void from want of a proper seal; that the judgment entered in the case is in form *in personam* and therefore void because the court had no jurisdiction of the person of defendant, the original notice having been served without the territorial jurisdiction of the court; that if the judgment is held to be *in rem* it is void because the attachment was void for want of a seal, and therefore the court had not obtained legal jurisdiction over the property; that the decree in the equitable proceedings against Adolph and Frederick Wehrman is of no validity, because the parties were non-residents of Iowa, did not appear in the suit, and the original notice therein was served upon defendants in Wisconsin; that the Orr tax title is void because made in O'Brien county by the officers thereof, who were without authority to make sale of the property; that the equitable estoppel relied upon cannot be made the basis for an affirmative decree restraining further proceedings in the law actions;
52 that an equitable estoppel is only available as a defense; that an equitable estoppel cannot be predicated on the facts alleged in the bill because, when the expenditures for taxes and improvements were made, the complainants knew or could have known from the record the condition of the title and were charged with knowledge of the adverse claims of the defendant; that mere silence and inaction on part of defendant would not constitute fraud, actual or constructive, on his part, and that defendant is not chargeable with laches defeating his right to proceed by ejectment to obtain possession of the realty.

If it be admitted that the proceedings in attachment did not, for any reason, ripen into a valid legal title, so that the complainant could not at law show a good title to the land, then the question arises whether the facts are such as to constitute an estoppel upon Frederick W*h*erman in favor of complainants.

According to the averments of the bill he knew in 1862 that Greeley, Ga*k*e & Co. were seeking to subject the realty to the payment of their claim and had brought a bill in equity to have declared void the conveyance to himself. Whilst service of the notice in such proceeding in the State of Wisconsin may not have conferred jurisdiction upon the Iowa court to render a personal judgment thereon binding upon said Wehrman, nevertheless it notified him that proceedings were in fact being taken for the purpose of subjecting the land to sale as the property of Adolph We*j*rman.

With this knowledge he remained wholly silent and inactive from that date until the bringing of the actions in ejectment, a period of over twenty-five years. During this period of time he never asserted title to the realty and never performed or sought to perform any of the duties of an owner thereof.

53 Under the statutes of Iowa it is made the duty of owners of realty in the State to see that the same is properly assessed and to pay the taxes thereon.

Code of Iowa, section 852.

According to the averments of the bill Wehrman never paid any of the taxes on the land, nor did he ever see to it that the lands were listed in his name as owner and properly assessed.

Had Wehrman, instead of bringing an action in ejectment, filed a bill in equity to remove the clouds upon and quiet the title of the realty, is it not clear beyond all question that a court of equity would have refused to aid him on the ground of laches? Can a person take a title to land, place the same on record, and then for twenty-five years stand by, knowing that others are asserting rights to the same, and then expect a court of equity to aid him in clearing up the title and restore the land to him when he wholly fails to excuse the long delay on his part?

It is not necessary to cite authorities in support of the proposition that under such circumstances a court of equity would refuse to aid and by dismissing the bill would practically affirm the title of the parties in possession.

It is, however, urged that whilst a court of equity might refuse its aid when its jurisdiction was involved by the one guilty of laches, — cannot grant a decree restraining the actions at law at the suit of the parties claiming the benefit of the estoppel.

In effect what is sought to be done is to make available against the legal claim of Frederick Wehrman the defense based upon his laches and conduct. The bill in equity is filed as a means
54 for defending against the law actions. The equities and rights of the parties grow out of the facts in existence when the actions in ejectment were brought and not out of the mere form of the proceedings.

Counsel for defendant admits that the bill filed shows ground of jurisdiction in the court of equity. Jurisdiction existing, is not the court justified in entering such a decree as the equities of the case demand? If the facts are such that if Wehrman was complainant the court would refuse a decree in his favor on account of laches and an estoppel based upon his conduct may not the court grant a decree against him when he is a defendant?

Complainants seek by the bill filed, not only to make a defense to the actions in ejectment, but also to obtain a decree quieting the title in them. If the actions in ejectment should be dismissed by the plaintiff therein that would render necessary the further prosecution of the bill in equity so far as it seeks to restrain the prosecution of those actions, but it would still remain as a bill to quiet the title, and upon the final hearing if it should appear that complainants were entitled to a decree quieting the title in them certainly the court would have the power to grant it.

Such a decree would bar any actions in ejectment that might be afterwards brought, and if the court can by its decree bar actions hereafter brought it can restrain the further prosecution of actions now pending.

The demurrer is to the entire bill. No matter how well taken the objections may be to specific portions of the bill, the demurrer cannot be sustained if the bill as a whole shows ground for relief. It is therefore overruled.

55 [Endorsed:] Filed June 14, 1889. A. J. Vanduzee, clerk.

56 And afterwards, to wit, July 1st, 1889, there was filed in the office of the clerk of said court the answer of the defendant in said cause; which said answer is in words and figures as follows, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant. } In Equity.

Answer.

The answer of Frederick Wehrman to the bill of complaint of T. B. Conklin and E. F. Conklin, complainants.

This defendant, Frederick Wehrman, now and at all times saving all benefit of exceptions to the many errors, uncertainties, and insufficiencies in the bill of complaint of the complainants, T. B. Conklin and E. F. Conklin, contained, for answer to said bill, and unto such portions thereof as he is advised it is material for him to make answer unto, answering, saith:

He admits that the complainants are each citizens and residents of the State of Iowa, and that this defendant is a resident and citizen of the State of Wisconsin as alleged in said bill.

He denies that the complainants are the owners of the real estate described in their said bill of complaint or any part or portion thereof, or that they or either of them have any right, title, interest, claim, or estate of any name or nature in or to said real estate or any part or portion thereof, and denies that their alleged title to said real estate rests upon the alleged facts set out in said bill of complaint or any part of such alleged facts, except as in this answer hereinafter admitted and set forth.

57 He admits that on the 9th day of March the brother of this defendant, one Adolph Wehrman, purchased the land described in said bill of complaint from the United States Government, and afterwards, on the 1st day of December, 1859, the said Adolph Wehrman received a patent of all said land from the United States, including seventeen hundred acres of other lands in said county of O'Brien.

He admits that afterwards, on the 17th day of December, 1859, the said Adolph Wehrman made a conveyance of the land described in said bill of complaint, together with about seventeen hundred acres of other lands, to this defendant, which said conveyance purported to be and was a full warranty deed and covered in all some two thousand one hundred and sixty acres of land, including the land described in said bill of complaint; but he denies that said deed and conveyance was in any sense a pretended conveyance as alleged in said bill of complaint, and avers that it was a full, ab-

solute, and *bona fide* conveyance of all of said lands upon a good and sufficient and meritorious consideration then paid by this defendant to the said Adolph Wehrman.

He admits that at the date of his deed from the said Adolph Wehrman the said county of O'Brien, in which all of the lands described in said deed were situated, was attached to the county of Woodbury, Iowa, by act of the lsgislature of the State of Iowa for revenue, election, and judicial purposes, and so remained attached to said Woodbury county until the 6th day of February, 1860, when it was duly organized as an independent county and has so remained ever since.

He admits that his said deed to said lands was duly filed for record in the proper office in the said county of Woodbury on the 2nd day of January, 1860, and in all respects duly recorded in said office and indexed, and that after the organization of said
58 county of O'Brien as aforesaid a properly certified copy of the deeds of land in said O'Brien county, which had been filed in said Woodbury county prior to the organization of said O'Brien county, was made, as by the laws of the State of Iowa provided, and sent to said O'Brien county, and was by said county placed in and became a part of the records of the recorder's office of said county, and has so remained ever since, and is known and designated as duplicate deeds record; that said duplicate deeds record contains what purports to be and is a true copy of the said deed from Adolph Wehrman to this defendant, and said deed now appears in said duplicate deeds record, and that a copy of said deed as so recorded and as made to this defendant is attached to said bill of complaint, marked Ex. "A," and made a part of said bill.

This defendant is now informed and believes and so admits the fact to be that on the 14th day of January, 1861, a copartnership under the firm name and style of Greeley, Gale & Company duly filed their petition in a certain action attempted to be brought and commenced by attachment proceedings in the district court of O'Brien county on the 14th day of January, 1861, against Adolph Wehrman as defendant; but he denies that said firm of Greeley, Gale & Company then or at any time commenced such action in the district court of O'Brien county by attachment proceedings or otherwise; he is now informed and believes and so admits the fact to be that a true copy of such petition so filed by Greeley, Gale & Company in an attempted action against said Adolph Wehrman is annexed to said bill of complaint as Ex. "B," and he is now informed and believes and so admits the fact to be that in said petition and attempted action said Greeley, Gale & Company
59 asked for the issuance of a writ of attachment against the property of the alleged defendant therein, said Adolph Wehrman, and duly filed their bond as by law required for the issuance of said writ of attachment, which said bond was duly approved by the clerk of said district court.

He denies that said alleged action was brought or attempted to be brought upon a certain judgment rendered by the circuit court of Pierce county, in the State of Wisconsin, against the said Adolph

Wehrman on the 12th day of September, 1860, and in favor of said Greeley, Gale & Company for the sum of one thousand six hundred and forty & $\frac{31}{100}$ dollars damages and costs, as alleged in said bill of complaint. On the contrary, this defendant avers and shows that said alleged action was attempted to be brought by — firm of Greeley, Gale & Company on a pretended judgment alleged to have been rendered in favor of said firm and against said Adolph Wehrman in May, A. D. 1860, by the circuit court in and for Pierce county, in the State of Wisconsin, as fully appears by the copy of said petition in the attempted action against the said Adoph Wehrman and a copy of the original notice in said action annexed to the said bill of complaint, and which this defendant admits to be correct copies; and this defendant alleges and shows that no such judgment against Adolph Wehrman as is mentioned in said petition and original notice was rendered by the circuit court of Pierce county, Wisconsin, in favor of said firm of Greeley, Gale & Company or against said Adolph Wehrman in A. D. 1860 or at any other time prior to the 12th day of September, 1860. He is now informed and believes and so admits the fact to be that on the 12th day of September, 1860, a judgment for such amount was rendered by said circuit court of Pierce county, Wisconsin, in favor of the firm of Greeley, Gale & Company against said Adolph Wehr-
60 man; and he is now informed and believes and so admits the fact to be that said judgment was rendered on personal service on said defendant, Adolph Wehrman, in said Pierce county, in the State of Wisconsin, and was in all respects in due conformity with the laws of Wisconsin, and that the sale of the premises described in a certain interlocutory decree was made by the referee therein named and therein provided, and a due report of such sale was made by said referee to said circuit court showing the deficiency remaining and unpaid after such sale in the sum of one thousand six hundred and forty & $\frac{31}{100}$th dollars, which said report was by said court duly confirmed and a judgment for said deficiency was rendered on the 12th day of September, 1860.

He is now informed and believes and so admits the fact to be that said summons and said confirmation of said report and the entry of judgment thereon are all shown by true copies thereof attached to said bill of complaint, ma*k*red Ex. "B 1," "B 2," and "B 3," and made a part of said bill; and that said proceedings were all in due conformity to the laws of the State of Wisconsin. But this defendant denies that any suit was brought or attempted to be brought in the alleged action attempted to be commenced by Greeley, Gale & Company against said Adolph Wehrman in the district court of O'Brien county, Iowa, on said judgment rendered by the circuit court of Pierce county, Wisconsin, in favor of said firm of Greely, Gale & Company against said Adolph Wehrman in the sum aforesaid on the 12th day of September, A. D. 1860. On the contrary, this defendant alleges and shows the fact to be that said attempted action against Adolph Wehrman in the district court of O'Brien county, Iowa, alleged a totally different judgment
61 from that rendered against the said Adolph Wehrman as

aforesaid on the 12th day of September, A. D. 1860; and that said alleged suit in the district court of O'Brien county, if the same had been regularly brought and regularly prosecuted to judgment, the satisfaction of such judgment would have constituted no bar whatever in favor of said Adolph Wehrman and against the said Greeley, Gale & Company to a further suit on said judgment of September 12th, 1860, or to proceedings to collect said judgment in the jurisdiction where the same was entered and rendered.

This defendant submits that it is wholly immaterial whether said judgment of date September 12th, A. D. 1860, rendered by the circuit court of Pierce county, Wisconsin, in favor of said Greeley, Gale & Company, for the sum of one thousand six hundred and forty & $\frac{31}{100}$th- dollars damages and costs against said Adolph Wehrman, was based upon the notes of said Adolph Wehrman, given long prior to the date of the conveyance of the lands mentioned in said bill of complaint of this defendant by said Adolph Wehrman, for the reason that said judgment was not sued on or attempted to be sued on in said action attempted to be brought by Greeley, Gale & Company against Adolph Wehrman in the district court of O'Brien county, Iowa, and this defendant therefore declines to answer the allegation in said bill of complaint touching the alleged notes of said Adolph Wehrman upon which it is alleged that said judgment of September 12, A. D. 1860, against him was founded, and doth demur to that portion of the said bill of complaint, for that it states no matter which entitles the complainants to relief from a court of equity.

This defendant denies that a writ of attachment was duly
62 issued as prayed for in the petition of Greeley, Gale & Company against the said Adolph Wehrman in the attempted action against said Adolph Wehrman in the district court of O'Brien county, Iowa. On the contrary, this defendant shows that the pretended writ of attachment issued in accordance with the prayer of said petition was of no force or validity whatever, but was wholly null and void because said pretended writ was not issued under the seal of the said district court of O'Brien county, Iowa, as required by the statutes of — then in force in that behalf. It is true that a pretended writ, not under the seal of the said district court, issued by the clerk thereof, verified by the signature of said clerk only, and directed to the sheriff of said O'Brien county, and that a copy of said pretended writ of attachment is annexed to the bill of complaint as " Ex. C." It is not true that said sheriff duly served said pretended writ by levying the same upon the land described in said bill of complaint and other lands, for the reason that said sheriff was without power or authority to serve said pretended writ in any manner whatever.

And the action of the said sheriff in attempting to serve said writ and levy the same upon said land was and is utterly null and void and of no effect. The copy of said pretended writ, however, annexed to said bill of complaint shows correctly the attempted action of the sheriff of said O'Brien county, pursuant to said writ, and the return of said sheriff made upon said pretended writ as the same

remains of file and record in the said district court of O'Brien county, Iowa, and it is true that the sheriff made such return of said pretended writ prior to the 3rd day of June, 1861.

This defendant is now informed and believes and so ad-
63 mits the fact to be that an original notice was issued in said attempted action of Greeley, Gale & Company *vs.* Adolph Wehrman, in the district court of O'Brien county, Iowa, and was placed in the hands of the sheriff of Pierce county, in the State of Wisconsin, on the 25th day of January, 1861, for service of the same on said Adolph Wehrman, and that on said day the said notice was personally served on said defendant, Adolph Wehrman, in said county of Pierce and State of Wisconsin; and this defendant admits that a true copy of said notice, with the return thereon, is attached to the bill of complaint herein, marked Ex. "D," and that said original notice with said return of service was filed in the office of the clerk of said district court of O'Brien county on the 23rd day of April, 1861.

This defendant admits that in the year 1860 and 1861 there was no time fixed by law for the holding of the terms of the district court of Iowa in said O'Brien county, and that during said year, under the law of the State of Iowa, the judge of said court was required to appoint the terms of said court by written notice to the clerk thereof, fixing the times when said court could be held, which notice was by law also required to be posted in public places in the various townships of the county. But this defendant denies that prior to the filing of said petition of Greeley, Gale & Company against Adolph Wehrman, in the district court of O'Brien county, Iowa, or prior to the issuance of the pretended writ of attachment in such attempted action, the judge of said court did, in fact, appoint a term of said court to be held on the 3rd day of June, 1861, in said county, by giving the clerk of said court written notice that a term of said court would be held on the 3rd day of June, 1861, in said county, or by any other notice or action on the part of said judge. It is true that no record of such order can be found among
the records of said court, and it is true that on the 23rd *23rd*
64 day of March, 1861, the judge of said court sent a written notice to the clerk thereof, appointing the holding of the term of said court for the said 3rd day of June, 1861, which notice was received by the clerk of said court and filed by him on the 23rd day of April, 1861, and was duly recorded by him; and the said record of said notice is the first and only record of the appointment of said June term of said court for the year 1861, which can now be found among the records of said court or which ever existed in fact.

This defendant believes the statement in said bill of complaint as to the state of the records of the district court of O'Brien county, Iowa, from and including the June term, 1861, up to the year 1870, to be true; but it is not true that the proceedings referred to in said bill of complaint preceding the allegations therein touching the state of said records were, in fact, had at the several dates thereof, except as in this manner expressly admitted.

This defendant is now informed and believes and so admits the fact to be that on the 13th day of August, 1861, Greeley, Gale & Company made application in vacation to the Hon. A. W. Hubbard, judge of said district court, for a change of venue in their attempted and pretended action from the county of O'Brien, which said application was by the said judge on the said day attempted to be sustained, and a pretended order was made changing the venue of said pretended cause from O'Brien county to Woodbury, in said State.

And a true copy of said application and pretended order to grant said change is attached to the bill of complaint and marked Ex. "E," and that said order was duly signed by the judge of said court, and that no record of said proceedings other than a pretended certified copy of the same can now be found among the records of said causes, which pretended certified copy of
65 said application and order is the one sent to Woodbury county by said clerk.

Whether such record was duly made and together with the other records referred to in the bill of complaint is not now in existence or has become lost or destroyed this defendant does not know and cannot set forth upon information, belief, or otherwise; and this defendant shows that said pretended order of the said judge, A. W. Hubbard, attempting to grant a change of venue in said attempted and pretended action of Greely, Gale & Company against Adolph Wehrman was void and of no effect, for that no such action was or ever had been pending in the district court of O'Brien county, Iowa, for the reason that the attempted and pretended writ of attachment therein was wholly invalid and null and void and gave no jurisdiction over the lands sought and attempted to be attached, and the original notice therein was served in the State of Wisconsin and gave no jurisdiction over the person of the said Adolph Wehrman, who never entered appearance in said pretended action, and the said pretended certified copy of the application and pretended order granting a change of venue was invalid, void, and of no effect for the reason that it was not certified to be the clerk of said court under the seal of said court, as required by law.

This defendant is now informed and believes and so admits the fact to be that upon said attempted and pretended order being made for the change of venue of said cause to Woodbury county the clerk of the district court of O'Brien county made a correct copy of said application and pretended order and sent the same to the clerk of the district court of Woodbury county, Iowa, together with the original papers filed in said cause, except said application and pretended order, and all of said papers were filed by the
66 clerk of the district court of Woodbury county on the 21st day of September, 1861, and said cause was attempted to be docketed in said court, but this defendant shows that no transcript was sent from the district court of O'Brien county to the district court of Woodbury county, as required by law, and the papers sent were not identified or verified as required by law, for that no accompanying certificate was made by the clerk of the district

court of O'Brien county under the seal of said court, as required by law.

This defendant further shows that the filing of said papers in the district court of Woodbury county and the attempted docketing *and* pretended cause was wholly illegal, void, and of no force and effect for the reasons hereinbefore set forth.

This defendant admits that at the time of the issuance of said writ of attachment in the said action of Greeley, Gale & Company against Adolph Wehrman and at the time of making out and attempting to certify the said pretended transcript in said cause so sent to the district court of Woodbury county as aforesaid the clerk of said district court of O'Brien county attached no seal of said court to said writ of attachment nor to the said pretended certified copy of said record in said cause, but in the place and stead of such seal the said clerk of the district court of O'Brien county did make use of a scroll with the word "seal" in the same as and for the seal of said district court of O'Brien county, and did attach said scroll to the said writ of attachment and said pretended certified copy of said record in the place of a seal of said district court.

As to whether or not the clerk of the district court of O'Brien county had not been provided with any seal of said district
67 court, and as to whether or not there was no such seal for said district court of O'Brien county in existence at said dates, and as to whether or not by reason of there being no such seal of said court at said date the clerk could not attach any seal to the said writ of attachment, and as to whether or not a scroll was used by said clerk on said writ of attachment and the pretended certified transcript of proceedings on account of having no seal as was usually provided for district courts of the State of Iowa, this defendant cannot set forth upon information, belief, or otherwise.

This defendant is now informed and believes and so admits the fact to be that the district court of Woodbury county, Iowa, attempted to render a judgment in said pretended cause of Greeley, Gale & Company against Adolph Wehrman at the time and for the amount set forth in said bill of complaint, and that said pretended judgment was recorded and docketed in the records of the said district court of Woodbury county, and a true copy of said pretended judgment and docket entry is attached to said bill of complaint, marked Ex. "F;" but this defendant denies that by the terms of said pretended judgment the lands thereby attempted to be ordered to be sold were lands theretofore actually attached in said pretended cause or ever in any manner attached in said cause, and denies that any lands were described or set out in the pretended writ of attachment issued in said pretended cause.

And this defendant shows that said pretended judgment of the district court of Woodbury county, Iowa, in said attempted and pretended cause was wholly illegal, null and void, and of no force or effect whatever for the reason that said district court of Woodbury county never in any manner acquired jurisdiction of the per-

son or property of Adolph Wehrman in said pretended cause
68 and proceeding or any of the lands attempted and pretended to be attached in said pretended cause and proceeding, and because of the various irregularities and illegalities hereinbefore in this answer set forth.

And this defendant further shows that the petition and cause of action in said attempted action of Greeley, Gale & Company against Adolph Wehrman in the district court of O'Brien county, Iowa, was based wholely and solely upon an alleged and pretended judgment of the circuit court of Pierce county, in the State of Wisconsin, a copy of which said pretended judgment was annexed to the said petition and made a part thereof, and a true copy of which, as the same was and is annexed to said petition, is annexed to this answer, marked Ex. "A," and made a part of this answer, which said pretended judgment of the circuit court of Pierce county, Wisconsin, was and is a mere interlocutory order and in no sense a judgment against the said Adolph Wehrman for any amount or sum whatever.

That the original notice in said attempted and pretended action of Greeley, Gale & Company against Adolph Wehrman in the district court of O'Brien county, a true copy of which is annexed to the bill of complaint herein, notified the said Adolph Wehrman that said attempted action was brought against him on a judgment rendered against him and in favor of Greeley, Gale & Company by the circuit court of Pierce county, State of Wisconsin, in May, A. D. 1860, and that the said Adolph Wehrman, well knowing that no such judgment had ever been rendered against him by the said circuit court of Pierce county, Wisconsin, gave no attention whatever to said pretended cause of action against him as he might well and lawfully
do; that when said pretended cause of action against the said
69 Adolph Wehrman came on for pretended hearing in the district court of Iowa within and for Woodbury county the said Adolph Wehrman, as alleged in the bill of complaint herein, in no manner appeared in said pretended cause, and an attempted and pretended default was entered against him, and thereupon the said Greeley, Gale & Company, in order to obtain an illegal, fraudulent, and fictitious judgment against Adolph Wehrman, presented to said district court of Woodbury county a transcript of a certain judgment rendered against Adolph Wehrman in their favor by the circuit court of Pierce county, Wisconsin, not in May, 1860, but on the 12th day of September, 1860, as shown by the copy of said judgment annexed to the bill of complaint of complainants herein, and thereupon, without amending their petition in said pretended cause and without any notice whatever to the said Adolph Wehrman of any claim against him on said judgment of September 12, 1860, the said Greeley, Gale & Company procured against said Adolph Wehrman in the district court of Woodbury county the pretended judgment, a copy of which is attached to the bill of complaint herein as Ex. "F," which said pretended judgment is not in any manner founded upon the judgment of Greeley, Gale & Company of September 12, 1860, against said Adolph Wehrman exhibited in evidence as afore-

said, but upon the alleged and pretended judgment of the circuit court of Pierce county, Wisconsin, of May, 1860, a copy of which was and is annexed to the petition of Greeley, Gale & Company and against Adolph Wehrman, but which is in fact no judgment or adjudication whatever for any sum, as already herein stated and set forth, and that the said pretended judgment of Greeley, Gale & Company against the said Adolph Wehrman in the district court of Woodbury county, Iowa, was procured as hereinbefore stated
70 and set forth and not otherwise. This defendant is now informed and believes and so admits the fact to be that on the 12th day of December, 1861, a duly certified copy of said pretended judgment of the district court of Woodbury county and transcript thereof was filed in the office of the clerk of the district court of O'Brien county, and that the said clerk of said court made an entry of the same on the Judgment Docket A of said court, and that a true copy of said docket entry of said pretended judgment is attached to the bill of complaint, marked Ex. "G;" but this defendant shows that such action was wholly illegal, void, and of no force or effect.

This defendant is now informed and believes and so admits the fact to be that prior to the June, 1862, term of the district court of O'Brien county, Iowa, the said Greeley, Gale & Company attempted to commence an action in equity in said court of O'Brien county, Iowa, and did file their petition in said court against the said Adolph Wehrman and his wife, Augusta Wehrman, and this defendant, attempting to make them all parties defendant in such attempted action; that said attempted action was undertaken to be commenced for the purpose of setting aside and for cancelling the deed from Adolph Wehrman to this defendant as fraudulent and void as against the said Greeley, Gale & Company and for the purpose of attempting to subject the lands described in said deed to this defendant, which included lands now pretended to be owned by the complainants and described in the bill of complaint to the payment and satisfaction of the pretended judgment theretofore attempted to be rendered by the district court of Woodbury county against said Adolph Wehrman and in favor of Greeley, Gale & Company, and that in said attempted cause the said plaintiff alleged the rendition of said pretended judgment against the said Adolph Wehrman, and that the said conveyance was made for the purpose of hindering and delaying
71 and preventing said Greeley, Gale & Company in collecting their claim and pretended judgment against the said Adolph Wehrman, and also alleging that the same was without consideration and fraudulent and void and of no force or effect as against the complainants in said attempted action, and praying that said conveyance be set aside, cancelled, and declared void as against said complainants, and asking that said lands be all subjected to the payment of the said pretended judgment of Greeley, Gale & Company against Adolph Wehrman attempted to be rendered by said district court of Woodbury county. As to whether the complainants are not able to set out a copy of said petition in said attempted cause or any of the papers therein, for the reason that the same have now become lost or destroyed and cannot be found, this de-

fendant does not know and cannot set forth upon information, belief, or otherwise.

He denies that due and personal service of the original notice in said attempted cause was had upon each or either of the defendants therein, including this defendant, or that any service whatever of said original notice was had upon either of said defendants or upon this defendant in said attempted action to set aside this defendant's said deed. This defendant is, however, now informed and believes and so admits the fact to be that in said attempted action to set aside this defendant's deed of conveyance an original notice was filed, on which was indorsed an original affidavit of some competent person to this defendant unknown, setting forth that such competent person had duly served said original notice personally upon this defendant and the said Adolph Wehrman and A-gusta Wehrman, his wife, in Pierce county, in the State of Wisconsin, by reading said original notice to each of them personally and delivering to each of them a true copy thereof; which said affidavit was sufficient in form and substance to show perconal service
72 upon each of the defendants to said attempted action in the county of Pierce and State of Wisconsin.

A*dn* that upon such affidavit of service only the district court of Woodbury county assumed jurisdiction in said attempted action and attempted to render in said pretended action a decree against this defendant and the other defendants to said pretended action, a copy of which is annexed to the said bill of complaint, marked Ex. "H," attempting to set aside this defendant's deed of conveyance from Adolph Wehrman for said land and to subject said land to the pretended judgment hereinbefore mentioned and attempted to be rendered by the district court of Woodbury county, Iowa, against the said Adolph Wehrman. This defendant shows that said decree attempting to set aside the said conveyance to this defendant and to subject said lands to the payment of the said pretended judgment against Adolph Wehrman was and is upon the face wholly void, illegal, and of no effect, for that the court attempting to enter and render said decree never acquired jurisdiction of the person of this defendant or *to* Adolph Wehrman or of his wife, Augusta Wehrman, and never in any manner acquired jurisdiction to render a decree *in rem* or *of* concerning the lands described in the bill of complaint herein or any of them, and also described in the conveyance from Adolph Wehrman to this defendant. It is true that in said attempted and pretended action to set aside this defendant's said deed no appearance was entered for this defendant or any of the other defendants in said pretended cause, as alleged and shown by the bill of complaint herein.

This defendant denies that the deed from Adolph Wehrman to this defendant of the land described i*f* the bill of complaint was, in fact, fraudulent or void as against the said Greeley, Gale & Co. or any of them, and denies that the same was made without a
73 consideration or for the express purpose or with any purpose on the part of all or any of the parties thereto of cheating or defrauding the said Greeley, Gale — Co. out of their claim against

the said Adolph Wehrman or for the purpose of hindering or delaying the said Greeley, Gale & Co. in the collection of their claim from the said Adolph Wehrman. As to whether the said Greeley, Gale & Co. were at the time creditors of said Adolph Wehrman this defendant does not know and cannot set forth upon information, belief, or otherwise.

It is true that during all the time of the proceedings mentioned in the bill of complaint in the district court of O'Brien county and of Woodbury county the said Adolph Wehrman, Frederick Wehrman, and Augusta Wehrman were residents of the State of Wisconsin, and that none of them were ever served with notice of the pendency of any such proceedings in the State of Iowa or otherwise except as hereinbefore admitted and set forth

This defendant denies that the decree rendered by the district court of O'Brien county in the attempted action to set aside his deed from Adolph Wehrman in any manner bars or estops him form claiming the land- described in the bill of complaint or any of them, or that he is now in any manner barred or estopped by the pretended proceedings in said cause or either of said causes from making claim to the lands described in the bill of complaint, either in whole or in part, and denies that his rights in and to said land- or any of them as against Greeley, Gale & Co. and their grantees or any of them have been fully and finally or in any manner adjudicated or determined by the said pretended decree of the district court of O'Brien county, and denies that said decree has always or ever been or now is in full force and effect or of any force or effect whatever against this defendant.

74 This defendant is now informed and believes and so admits the fact to be that, after the rendition of the pretended decree by the district court of O'Brien county attempting to set aside this defendant's deed of conveyance from Adolph Wehrman, the said Greeley, Gale & Co. caused the pretended execution to be issued, a copy of which is annexed to the bill of complaint herein as Ex. "I," and attempted to cause lands to be sold under said execution, and that the sheriff of O'Brien county returned said pretended execution, all as set forth in the bill of complaint, but he denies that said pretended execution or sale was of any force or validity whatever; he denies that the pretended judgment or any judgment was satisfied either in wholy or in part by the pretended sale of said land, but admits that a pretended satisfaction of said pretended judgment was entered upon the judgment, as shown by Ex. "F" attached to the bill of complaint.

This defendant is now informed and believes and so admits the fact to be that no redemption was made from the pretended sale on said pretended execution, and that a pretended sheriff's deed was executed and filed for record and recorded, as alleged in the bill of complaint, but he denies that said pretended sheriff's deed was of any force or effect whatever or conveyed any interest whatever in the land therein described or any of said land, and he denies that by virtue of the proceedings set forth in the bill of complaint or any of them, or by the said pretended sale of said land under such pre-

tended execution, or by the said pretended sale of said land under such pretended execution, or by the said pretended sheriff's deed of said land, including the land now claimed by complainants, Carlos S. Greeley became the owner of said lands or any of them, or that he ever acquired any right or interest therein, or
75 that he ever had any right or authority to sell and convey said lands or any of them and make good title or any title thereto as against Adolph Wehrman or as against this defendant.

This defendant is now informed and believes and so admits the fact to be that the lands described in the bill of complaint were attempted to be sold for taxes, and that a tax deed was made of said lands and recorded, all as alleged in the bill of complaint, and that a copy of said tax deed, so far as it relates to the lands in controversy, is annexed to the bill of complaint as Ex. "J," and admits that the fact of said attempted tax sale and tax deed are correctly set forth in said bill of complaint; but this defendant alleges and shows that said attempted tax sale and tax deed as to all of said lands are and at all times have been illegal and utterly invalid and void for the reason that the treasurer of O'Brien county, as appears upon the facys of the bill of complaint, was wholly without authority to sell said lands or any of them for the alleged delinquent taxes thereon.

And this defendant denies that the defects in said tax deed or tax proceedings are or have been long since or in any manner cured by the lapse of time or by the lapse of more than five years from the date of the record of said tax deed, because said tax sale and tax deed were and are utterly null and void and the defects therein are not cured by any statute of limitations of the State of Iowa or lapse of time or otherwise.

This defendant is now informed and believes and so admits the fact to be that Chasrles C. Orr made and delivered to Carlos S. Greeley a quitclaim deed of the lands described in the bill of complaint, as alleged in and by said bill of complaint, and that said deed
76 was indexed and recorded, as alleged in and by said bill of complaint.

This defendant is now informed and believes and so admits the fact to be that Carlos S. Greeley, being a widower, executed to Frank A. Turner the deed set out and described in the bill of complaint, and that the same was filed for record and indexed and recorded, as alleged in and by the said bill of complaint, and also that the said Frank A. Turner, being a single man, executed to the complainant T. B. Conklin the deed mentioned and described in the bill of complaint, and that said deed was filed for record, indexed, and recorded, as alleged in and by said bill of complaint.

And also that Carlos S. Greeley, being then a widower, executed to the complainant T. B. Conklin the two certain deeds mentioned and described in said bill of complaint, and that each of said deeds were filed for record, indexed, and recorded, as alleged in and by said bill of complaint.

Further answering as to the tax sale and tax deed of said lands set out in the said bill of complaint, this defendant denies that

Charles C. Orr, mentioned in said bill of complaint, became or was owner of said lands or any of them by virtue of his tax deed mentioned in said bill of complaint, or that he acquired any interest, right, or title in or to said lands or any of them under or by virtue of said tax deed or the pretended tax sale upon which said deed was found; and as to the suit alleged in said bill of complaint to have been brought by the County of Clay against the County of Woodbury for certain taxes, this defendant has only been informed thereof by the complainants' said bill of complaint, and cannot set forth upon information or otherwise whether the allegations touching said suit or any of them are true, and as to the agreement or understanding alleged in said bill of complaint to have been had

77 between O'Brien county and the county judge of Woodbury county or Woodbury county through its other officers touching the taxes for which said lands were attempted to be sold and other taxes, and as to whether or not Woodbury county never made any claim of any kind to any of said delinquent taxes or in all respects or in any respect recognized and agreed to the claims of O'Brien county thereto or recognized the claim of right by O'Brien county to enforce the collection of such delinquent taxes or any of them by sales of land therefor, this defendant has only been informed by complainants' said bill of complaint and cannot set forth upon information, belief, or otherwise whether such allegations are true or not.

This defendant avers, however, that all such allegations in the bill of complaint touching the alleged litigation between Clay county and Woodbury county and the circumstances under which O'Brien county attempted to collect the taxes for which said lands were attempted to be sold are in law wholly insufficient to entitle the complainants to any relief whatever and wholly insufficient to show any right or power on the part of O'Brien county or its officers to sell this defendant's said lands for taxes.

This defendant is now informed and believes and so admits the fact to be that the complainants are husband and wife and were such at the dates of the several conveyances and alleged purchases of the lands in controversy in this suit to and by the complainant T. B. Conklin, and that they immediately took full possession of each of the several tracts of land described in the bill of complaint at the dates of their said several alleged purchases of the same, and have ever since been in the full, open, and notorious and adverse possession of all the same and in the actual occupancy of all of the same during all of said time.

78 This defendant denies that each or any of the grantees of Carlos S. Greeley of the lands described in said bill of complaint, including the complainant T. B. Conklin, did at the dates of their several alleged purchases of the same make such alleged purchases or any of them in good faith, and denies that said complainant T. B. Conklin or his grantor of forty acres, Frank A. Turner, attempted to purchase said lands from said Carlos S. Greeley in the utmost good faith or in full reliance upon the title of said lands being good and valid in law or in equity in the said Carlos S. Greeley

as against the claim of this defendant or any one claiming by, through, or under him, and denies that the complainant T. B. Conklin, in making his attempted purchase of said forty acres from said Frank A. Turner, paid the full actual value of said land or made said purchase in the utmost good faith or in full reliance upon the title of said land being good or valid in law or equity as against the claim of this defendant or any one claiming by, through, or under him; and denies that at the times of making the said alleged purchases of said lands or of paying the taxes referred to in said bill of complaint, or any of them, or in making improvements as set out in said bill of complaint, the complainants or either of them had no notice of knowledge whatever of any defects in the said title to any part of said land; and denies that the complainants or either of them in good faith believed that the decree against Adolph Wehrman and this defendant, set out in said bill of complaint, was valid or binding, or that said tax deed was a good or valid tax deed to said premises or any part thereof, or that the title of said Adolph Wehrman or this defendant had been fully or in any manner extinguished by said decree or sale, or that the complainants had no knowledge that this defendant made any
79 claim whatever to said land or any part thereof until the beginning of a suit in this court on the law side for the recovery of the possession of said land from the complainants. On the contrary, this defendant alleges the fact to be that at the times of the said several attempted purchases referred to in the said bill of complaint it appeared upon the face of the record in the attempted attachment proceedings against Adolph Wehrman that the attempted judgment therein and attempted sale thereunder were wholly and utterly illegal, invalid, and void for the reasons hereinbefore set forth, and it appeared upon the face of the proceedings in the attempted suit in equity against said Adolph Wehrman and this defendant that said proceeding and the attempted judgment and decree therein were wholly and utterly illegal, invalid, and void for the reasons hereinbefore set forth. It also appeared upon the face of the proceedings and records on and under which it was attempted to sell said land for taxes, as alleged in the bill of complaint, that said proceedings and attempted sale and the pretended tax deed thereunder were wholly and utterly illegal, invalid, and void for the reasons hereinbefore set forth; and T. B. Conklin and all others made attempted purchases of said lands with full notice and knowledge that the said Carlos S. Greeley and Frank A. Turner, claiming solely under such void and illegal proceedings, had no interest, right, or title in or to said lands or any of them and made such pretended purchases and each of them wholly at their own peril, with notice and knowledge of the fact that this defendant was the real owner of said lands and all of them, as shown by his title of record at the time such attempted purchases were respectively made.

As to whether the complainants or either of them or their grantors from Charles C. Orr and Carlos S. Greeley or either
80 of them have paid all or any of the taxes and assessment

on said lands or any of said lands for the period of thirty years or otherwise, and have expended large or any sums of money in so doing, this defendant has only been informed by complainants' said bill of complaint and cannot set forth upon information, belief, or otherwise whether said allegation is true.

This defendant is now informed and believes and so admits the fact to be that the complainants have been in the actual, open, and adverse possession of all the lands to which they assert title in their bill of complaint as alleged in said bill of complaint, and during said time have been making claim to be the absolute owners of said land under their alleged title; but this defendant avers that they have so been in possession and making claim to said land with full knowledge and notice of the invalidity of their pretended title.

This defendant is now informed and believes and so admits the fact to be that the complainants have made improvements on the land claimed by them in said bill of complaint substantially as alleged in said bill of complaint and to the extent and value alleged in said bill of complaint; but he denies that such improvements or any of them were made or the money expended therefor in good faith or in reliance on their pretended title being good as alleged in the bill of complaint; and denies that during all or any of the time that the complainants have been improving said land or expending money in paying taxes, if they have paid any taxes, that this defendant never asserted any right or claim to said premises or in any manner notified the complainants of his interest in said land or claim thereof. On the contrary, this defendant alleges
81 the fact to be that all such improvements were made and moneys expended therefor for taxes, if any, with full notice and knowledge on the part of the complainants and each of them that their pretended title to said land was wholly void and invalid, and that this defendant has always asserted his right, title, and claim to said land and all of it by the due and legal record of his title as required by law, and that as the holder of the legal title to said land he was in possession thereof until wrongfully and illegally ousted and disseized by the complainants, as set forth in their bill of complaint.

This defendant admits that the land claimed by the complainants in their said bill is now, in the aggregate, of the full value of eight thousand dollars, and that the improvements placed thereon by the complainants have added to the value of the said land to the extent of the value of said improvements; but he denies that such improvements have made said land of the present value of twenty-five dollars per acre or that they have added to the value of said land in any sum beyond the amount and value of said improvements.

This defendant denies that he has lain by during all or any of the years referred to in the bill of complaint or has delayed to assert any claim to said lands until the same *has* become valuable by reason of the expenditures of labors of the complainants on the same. On the contrary, he avers that he has always asserted claim and title to said land and all of it, and that said land has always

been valuable, irrespective of any improvements thereon, and has so become valuable, with other lands in O'Brien county, irrespective of the improvements thereon, although he admits that the improvements thereon have added to its value as in this answer hereinbefore stated and set forth.

82 This defendant admits that neither Adolph Wehrman nor this defendant have at any — paid any taxes or assessments on any part of the land claimed by complainants and described in the bill of complaint, and that no one has ever paid said taxes for them, for the reason that such taxes have been paid by other parties, to this defendant unknown. Whether all or any of the taxes levied upon said land from the date of its entry by said Adolph Wehrman have been paid by the sale of said lands, as in the bill of complaint set out, for taxes, or by purchasers at such sales, or by Carlos S. Greeley or his grantees, this defendant cannot set forth upon information, belief, or otherwise, except that he admits the payment of some taxes by said tax sale, as shown by the tax deed.

This defendant denies that he has never made any claim to said — or any part thereof since the date of the deed to him from Adolph W*her*man, or that he has never exercised acts of ownership or control over the same or sought or tried to do so, or in any manner given the complainants any notice or knowledge of any claim by him to any of said lands at any time prior to the commencement of his action at law to recover possession of said lands. On the contrary, this defendant alleges and shows that he has been continuously and still is the absolute, unqualified owner of all of said land in fee simple, and has at all times asserted his title thereto by the due and legal record of his deed from Adolph Wehrman, and has at all times exercised ownership and control over saod lands, until he was wrongfully disseized by the complainants, by having and holding the full possession of said lands and all of them as the full legal owner thereof. He has given the complainants and each of them, and all other parties mentioned in said bill of complaint, full legal notice of his claim to said lands and all of *it* by the record

83 of his deed as required by law and as alleged in and by said bill of complaint.

This defendant denies that he had actual knowledge of the fact that said land had been attached as alleged in said bill of complaint, and denies that said land was attached, and denies that he had any notice or knowledge of the attempted attachment thereof, and denies that he had any knowledge or notice that a judgment had been rendered against Adolph Wehrman or that said lands were ordered sold to satisfy said judgment, and denies that the judgment was rendered against Adolph Wehrman and that he had any notice or knowledge of such attempted and pretended judgment, and denies that he had actual knowledge or any knowledge of the fact that a suit in equity was brought by Greeley, Gale & Co. for the purpose of subjecting said land to the payment of said alleged judgment or to set aside and have declared fraudulent, void, and cancelled this defendant's deed from Adolph Wehrman, under which he now claims title to said land, or to subject the same to the payment of

such alleged debt or any debt either at or at any time since the commencement of said action in equity until about 1888, and denies that any notice of the pendency of such suit in equity was ever in any manner served on him, and denies that he has not, during all or any of said time alleged in the bill of complaint to be now more than twenty-seven years, taken any steps to notify purchasers of said land of his claim and interest to the same or to assert any claim on his part to said land until his action at law mentioned in the bill of complaint was commenced, and denies that during any or all of such time he has made no claim to the said land, and denies that he has ever in any manner abon-
84 doned said land or any part thereof, and denies that by reason of the alleged facts set out in the bill of complaint or any of them or his alleged ling delay that he ought not now be permitted to assert any title to said land, and denies that he is estopped by any laches on hie part from doing so; on the contrary, this defendant alleges the fact to be that he has always asserted title to said land and claimed the same, and has been in possession thereof until wrongfully disseized, and has given notice of his rights and claim thereto as in this answer hereinbefore set forth and in the only manner provided and required by law.

This defendant admits that he has not taken any steps to have the sheriff's sale or tax sale or decree attempting to cancell his deed from Adolph Wehrman, under all of which complainants claim title, set aside or corrected, for the reason that he did not have notice or knowledge thereof, and he submits and insists that all of such proceedings and records were illegal, invalid, and void upon the face thereof and that all parties claiming thereunder were chargeable with full notice and knowledge of such illegality and invalidity, and that it never devolved upon this defendant to take any steps either at law or in equity to set aside or correct such void, invalid, and illegal records and proceedings or any of them.

This defendant admits that at the time of the attempted sales of said lands for taxes and under pretended judicial proceedings set out in the bill of complaint said lands were wild and unoccupied prairie lands and that the county of O'Brien was very sparsely settled, but he denies that said lands were not worth to exceed the sum for which they were attempted to be sold at such pretended judicial sale, and denies that Adolph Wehrman received the full value of said lands or any value of said lands in said alleged
85 and pretended sale, and denies that Adolph Wehrman received the full benefit of the alleged consideration paid by Carlos S. Greeley for said lands or any part of such consideration or any consideration whatever, and denies that Carlos S. Greeley paid any consideration for said lands, for that the pretended judgment in the attachment proceedings set out in said bill of complaint was attempted to be rendered upon a pretended judgment of the circuit court of Pierce county, Wisconsin, which was set out in said attempted attachment proceedings, and the real judgment against said Adolph Wehrman was in no manner attempted to be sued on in said attempted attachment proceedings or merged

therein, but remained in full force and effect, undischarged, and unaffected by said attempted attachment proceedings.

This defendant admits that the lands claimed by the complainants in the bill of complaint are now worth twenty-five dollars per acre, but denies that said value, aside from the actual value of complainants' improvements, is owing to said improvements made by the complainants, but admits that such value is owing in part to the settlement of the county and the increase of population therein.

This defendant avers the fact to be that the complainants have received more than the full — of all improvements placed upon the land claimed by them in their bill of complaint from the rents and profits of said land during the time the complainants have been wrongfully in possession thereof.

This defendant denies that the complainants or either of them have at all times or any time in all or any of their acts with reference to the attempted purchase or payment for or improvement of said lands or any of them, as set out in their bill of complaint or otherwise, relied upon the alleged fact that this defendant
86 has never made any claim to said lands, and denies that the complainants were induced to so or in any manner rely by reason of the alleged silence of this defendant. On the contrary, this defendant alleges that the complainants and each of them have at all times acted with full notice and knowledge of the claim and title of this defendant in and to said lands and every parcel thereof and with full notice and knowledge of the invalidity of their own claim of title to said lands and each tract and parcel thereof.

This defendant denies that he is barred or estopped by the statute of limitations from raising or orging any defects in the alleged judicial proceedings or the tax proceedings alleged in the bill of complaint, or any defect in either of said alleged titles, for the reason that more than five years have elapsed since said alleged judicial proceedings were had and the alleged sheriff's deed and tax deed were executed and recorded. On the contrary, this defendant shows that such alleged proceedings and deeds were and are wholly illegal and void upon their face and of no force or effect whatever, and that such invalidity is in no manner cured or aided by the statute of limitations.

As to whether the land claimed by the complainants, or any of it, together with all or any of the balance of the lands described in the pretended sheriff's deed to Carlos S. Greeley, have been taxed or listed in the tax lists or records of the county of O'Brien, in the State of Iowa, in the name of Greeley, Gale & Co., part of the time since the year 1861, inclusive, to the year 1869, inclusive, or a part of said time in the name of Carlos S. Greeley since the year 1869, or in the name of one of said parties or of their grantees or never since the year 1860 in the name of this defendant or Adolph
87 Wehrman, this defendant has only been informed by complainants' said bill of complaint and cannot set forth upon information, belief, or otherwise.

This defendant avers and shows, however, that up to about the year 1880 the said county of O'Brien was without railway communi-

cations and was very sparsely settled, and that this defendant resided continuously in the State of Wisconsin, of which State he was and is a citizen, and that he was without ready means to make journies to Iowa to examine into the condition of his said land or the manner or method of the assessment, listing, and taxation thereof.

That up to the time when the complainants entered into the possession of said lands by far the larger proportion of all unimproved lands were assessed and born- on the tax-list of said county for taxation under the designation of unknown owners.

And he is advised and believes and so avers the fact to be that his land- in said county, including the lands in controversy in this suit, were so assessed and borne on the tax-list of said county almost continuously up to the time that the complainants wrongfully entered into the possession thereof; that the assessment and taxation of unoccupied lands of unknown owners and the bearing of the same on the tax-list of the county under that designation has been authorized and warranted by the laws of Iowa from the year 1859 up to the present date, inclusive, and that listing and taxing unoccupied lands in that manner has been and is in accordance with the custom of the county of O'Brien and other counties in the State of Iowa from 1859 up to the present time, and that such method od assessing, listing, and taxing lands in O'Brien county has never been regarded by the public or by the citizens of said county as an abandonment of such lands on the part of the owner thereof.

88 This defendant admits that he makes claim to the lands described in the bill of complaint, and all of them, under and by virtue of the conveyance to him of said lands by Adolph Wehrman, which conveyance is set out by copy in and by said bill of complaint. He denies that his said claim constitutes a cloud on the title of the complainants to said land, and denies that the complainants have any right or title to said land or any part thereof. He admits that the complainants are in the actual occupancy and possession of said lands, and admits that he has commenced an action in this court on the law side thereof for the ejectment of said complainants, in which action this defendant claims to be the absolute owner of *this* premises under his deed from said Adolph Wehrman, but he denies that he has brought such action for the purpose of injuring the complainants or either of them, but alleges that he has brought the same in good faith to recover his own property which the complainants wrongfully keep him dispossessed of, to his great damage and injury. He admits that his said action is now pending in this court, but denies that he is barred or estopped by any silence or laches on his part or by reason of any of the matters or things set out in the bill of complaint from being permitted to assert title or claim to said premises, and denies that the complainants cannot set up and plead all laches and equitable estopple alleged against this defendant in their bill of complaint in said law action.

This defendant alleges and shows that all parties who have paid

taxes upon said land described in the bill of complaint, or any part thereof, have paid such taxes in their own wrong with full
89 motive and knowledge of this defendant's ownership of and title to said lands and of the invalidity and illegality of all of the alleged proceedings, sheriff's sale, and tax sale under which the complainants claim title in and by their bill of complaint, and that all such taxes have been paid in bad faith at the risk and peril of the parties, respectively, who paid them.

This defendant doth demur to the whole of complainants' said bill of complaint for that the same contains no matter of equity upon which a decree can be grounded giving complainants any relief herein, and for that the complainants in and by their bill of complaint have shown and show no equity or title to relief in this suit; and this defendant denies all fraud, illegality, want of good faith, combination, and conspiracy wherewith he is charged in and by said bill of complaint, and asks to be hence discharged with his reasonable costs in this behalf most wrongfully sustained.

CHAS. A. CLARK,
Solicitor and of Counsel for Defendant.

FREDERICK WEHRMAN, *Defendant.*
J. W. BULL,
Of Counsel for Def't.

STATE OF WISCONSIN, } ss:
County of Pierce, }

Frederick Wehrman, being duly sworn, deposes and says that he is the defendant who has made and subscribed the above and foregoing answer; that as far as concerns his own act and deed said answer is true to his own knowledge, and that so far as relates to the act or deed of any other person or persons he believes said answer and all matters therein stated to be true.

FREDERICK WEHRMAN.

Subscribed and sworn to this 2nd day of July, A. D. 1889, before me—

[SEAL.] JESSE S. FIELD,
Notary Public in and for Pierce County, Wis.

90 EXHIBIT "A."

Pierce County Circuit Court.

CARLOS S. GREELEY, DANIEL B. GALE, & CYRUS Burnham, Partners Doing Business under the Firm Name and Style of Greeley, Gale & Co., *vs.* ADOLPH WEHRMAN & AUDUSTA WEHRMAN. } May Term, 1860.

Present: Hon. S. S. N. Fuller, circuit judge.

On reading and filing the certificate of Henry P. Ames, sheriff of Pierce county, proving the service of the summons and com-

plaint in the action and the affidavit of H. A. Jay that no answer has been put in nor appearance entered by either of the defendants, and that they are neither of them absentees, and that notice of the pendency of this action in due form was filed in the office of *of* the register of deeds in and for said county on the 17th day of December, 1859, and the proper order having been made to compute the amount due to the plaintiff- upon said notes and mortgages, and the same having been duly made by I. S. White, who was sworn in open court for that purpose, whereby it appears that there is now due the plaintiffs thereon the sum of nineteen hundred and forty-two and $\frac{00}{100}$ dollars, and on motion of I. S. White and Jay, attorneys for the plaintiffs, it is adjudged that the mortgaged premises described in the complaint in this action, as hereinbefore set forth, or so much thereof as may be necessary and as may be sold separately without prejudice to the interest of the parties thereto, be sold at public auction in the said county of Pierce by P. V. Wise, Esq., referee for that purpose by the court appointed.

91 That said referee give public notice of the time and place of such sale according to the law and practice of this court; that either or any of the parties may purchase at such sale; that the said referee execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the moneys arising from such sale, after deducting the amount of his fees and expenses on such sale and any lien or liens upon said premises so sold at the time of such sale for taxes or assessments, the said referee pay to the plaintiffs or their attorneys the sum of thirty-eight dollars and eighty-five cents adjudged to the plaintiffs for costs and charges in this action, with interest from the date hereof, and also the amount so found due as aforesaid, together with the legal interest thereon from the date hereof or so much thereof as the purchase-money of the mortgaged premises will pay of the sum, take a receipt therefor, and file it with the report of sale; that he deposit the surplus money, if any, in the City Bank of Prescott, subject to the order of the court immediately after he receives the same; that he make a report of such sale and file it with the clerk of this court with all convenient speed.

That if the proceeds of such sale be not sufficient to pay the amount so reported due the plaintiffs, with interest and costs a- aforesaid, the said referee specify and report the amount of such deficiency in his report of sale, and that the defendant Adolph Wehrman be adjudged to pay the same to the plantiffs, and that the purchaser or purchasers at such sale be *oet* into possession on production of the referee's deed and certified copy of the order confirming the report of sale.

And it is further adjudged that the defendant and all persons claiming under them or either of them, after the filing of

92 said notice of pendency of this action, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold or any part thereof. The following is a description of the mortgaged premises hereinbe-

fore mentioned, to wit: Lot No. four (4), in block B, in the village of Prescott, in said county.

By the court:

S. S. N. FULLER,
Circuit Judge.

93 [Endorsed:] 93. Conklin *et al. vs.* Wehrman. Answer. Filed July 1, 1889. A. J. Vanduzee, clerk, by J. H. Bolton, deputy.

94 And afterwards, to wit, Aug. 5th, 1889, there was filed in the office of the clerk of said court the replication of complainants in said cause; which said replication is in words and figures as follows, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants, *vs.* FREDERICK WEHRMAN, Defendant. } In Equity. Replication.

The Replication of T. B. Conklin and E. F. Conklin, Complainants, to the Answer of Frederick Wehrman, Defendant.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will ever, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

E. C. HERRICK,
Solicitor for Complainants.

W. L. JOY,
WARREN WALKER,
Of Counsel.

95 STATE OF IOWA, } *Cherokee County.* }

T. B. Conklin, being duly sworn, deposes and says that he is one of the complainants in the foregoing-entitled action; that he has read the foregoing replication and knows the contents thereof; that the said replication is true of his own knowledge except as to those

matters which are therein stated to be on his information and belief, and as to these he believes them to be true.

T. B. CONKLIN.

Subscribed in my presence and sworn to before me by the said T. B. Conklin this the 29th day of July, 1889.

E. C. HERRICK,
[SEAL.] *Notary Public in and for Cherokee County, Iowa.*

96 [Endorsed:] No. 93. Eq. T. B. Conklin *et al. v.* Frederick Wehrman. In equity. Replication. Filed Aug. 5th, 1889. A. J. Van Durzee, cl'k. J. H. Bolton, d'p'ty.

97 And afterwards, to wit, Oct. 1st, 1890, there was filed in the office of the clerk of said court certain depositions in said cause; which said depositions *is* in words and figures as follows, to wit:

In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants, *vs.* FREDERICK WEHRMAN, Defendant. } Stipulation to take Deposition.

It is hereby stipulated and agreed by the parties to the above-entitled action that the depositions of E. H. Ives, Andrew Rader, and Cyrus F. Covill may be taken on the interrogatories and cross-interrogatories hereto annexed before any notary public in and for the county of Pierce and State of Wisconsin or before any United States commissioner for the State of Iowa residing in the said county, in the State of Wisconsin, who is hereby agreed upon by the parties hereto as a commissioner for that purpose at Prescott, in the county of Pierce, in the State of Wisconsin, on the 24th day of August, 1889, or on any day or days between said date and the 20th day of September, 1889, said depositions to be used on the trial of the said cause on the part of the complainants. Notices of all kinds and copies of interrogatories and the issuing of a commission or commissions and the appointment of examiners or commissioners by the court or clerk or judge is hereby expressly waived. The propounding of the final interrogatory provided for by rule 71 is also waived.

Said depositions in each case to be subject to all other objections not herein waived.

98

E. C. HENICK,
W. L. JOY, &
WARREN WALKER,
Counsel for Complainants.
J. W. BULL,
CHAS. A. CLARK,
Counsel for Defendant.

Dated this 17th day of August, 1889.

In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN
vs.
FREDERICK WEHRMAN, Defendant.

STATE OF WISCONSIN,
County of Pierce.

ANDREW RADER, a witness called on behalf of the complainants herein and residing in the city of Prescott, in the county of Pierce and State of Wisconsin, more than one hundred miles from the place where this cause is to be tried, being first duly cautioned and sworn to tell the whole truth and being carefully examined, doth, in answer to the interrogatories propounded to him, depose and say:

Interrogatory 1st. State your name, age, place of residence, and occupation.

Answer. My name is Andrew Rader; my age is sixty-one years; my place of residence is the city of Prescott (formerly town of
99 Prescott), Pierce county, State of Wisconsin. Until quite recently I was for many years a merchant and postmaster in said city. Just at the present time I am not engaged in any particular business.

Interrogatory 2nd. State how long you have lived in the town of Prescott, in Pierce county, State of Wisconsin.

Answer. I have lived in the now city of Prescott (formerly the town of Prescott), in the said county, thirt*h*-five years.

Interrogatory 3rd. Are you acquainted with the plaintiffs in this action?

Answer. I am not.

Interrogatory 4th. Are you acquainted with the defendant, Frederick Wehrman? If yea, then state how long you have known him and where he has lived during that time.

Answer. I am. I have known him thirty-*tow* years; during that time he resided in the city of Prescott and the town of Oak Grove, adjoining said city; my last recol-ection is that he moved from Prescott to Oak Grove, some four miles from Prescott, in 1858 or 1859 and lived there about four years; then came back to Prescott, where he has resided ever since.

Interrogatory 5th. If, in reply to the last preceeding question, you say that you have been acquainted with said Frederick Wehrman for the last thirty years and that he has during that time lived in or near the town of Prescott, in Pierce county, Wisconsin, then state whether or not you know what has been his occupation during that time.

Answer. The time he lived in Oak Grove he was farming. In 1862 I entered the army and was absent a little over three years;
shortly after I returned said Wehrman also returned, he
100 having also been in the army; he, on his return, bought a span of mules and went to draying and continued draying

and teaming by the day until, I think, 1882; since 1882, so far as I know, he has worked by the day, when he worked at all.

Interrogatory 6th. If, in reply to the last preceeding question, you say that the occupation of the defendant has generally been that of a laboring man, then state what his occupation was during the month of December, 1859.

Answer. My recollection is that in 1859 he was working out part of the time and cultivated a small piece of land. I cannot be specific as to what he was doing in the month of December of that year.

Interrogatory 7th. If you say, in reply to the last preceeding question, that defendant was engaged in farming at the time mentioned, then state how far from Prescott and to what extent he was so engaged in farming; or, if you say he was engaged in laboring, then state, as near as you can, what kind of labor and how he was laboring.

Answer. He was farming about four miles from Prescott. I think there was about thirty acres broke on the farm and I suppose he cultivated all that was broke. When engaged in laboring for others it was as a common laborer in a farming community.

Interrogatory 8th. State what. if any, means said defendant had, to your knowledge, in the month of December, 1859; state fully.

Answer. I have no knowledge of his having any means in the month of December, 1859; he had a few farming implements and a meager supply of household goods; beyond that I know
101 of nothing.

Interrogatory 9th. Was your acquaintance with defendant such at that time that if he had had property to any considerable extent you would have known it?

Answer. Yes.

Interrogatory 10th. State, if you know, what defendant's financial standing there was in December, 1859, and about that time, and what credit, if any, he then had.

Answer. His financial standing in December, 1859, was not good, and his credit no better.

Interrogatory 11th. From your knowledge of the man and his financial standing at the time referred to in the last question what would you say with reference to his ability to borrow three thousand dollors without security?

Answer. I do not think he could have borrowed that sum nor the tenth part of it.

Interrogatory 12th. State whether or not you are and have been acquainted with the habits of the dependent with reference to the use of intox-cating liquors.

Answer. Yes.

Interrogatory 13th. If, in reply to the last preceding question, you say you do know what defendant's — are and have been with reference to the use of intoxicating liquors, then state what those habits are and have been and how long they have been followed by defendant. State fully and whether the use of such liquors has been to exces- or not; and, if so, how long.

Answer. He has been addicted to the excessive use of intoxicating liquors ever since the war of the rebellion.

Interrogatory 14th. Were you acquainted with one J. B.
102 Freeman, who use- to be sheriff of Pierce county, Wisconsin, in or about 1860 or 1861? If yea, then state where said Freeman now is or what has become of him.

Answer. I was acquainted with said Freeman and know he was sheriff of Pierce county, State of Wisconsin, about 1860 or 1861 for a term lasting two years; will not be positive in which year it commenced. I do not know where he is now except from report he removed from Prescott to some point in the West, and I have since been informed by C. G. Couel, his brother-in-law, and others that he is dead; that he died some two or three years ago.

Interrogatory 15th. State whether or not you ever knew one Smith R. Glenn or Smith R. Grum, who was clerk of the courts in Pierce county, Wisconsin, along in the years 1860 or 1861.

Answer. I knew Smith R. Grum, who was clerk of the circuit court for Pierce county, Wisconsin, in 1860 or 1861 or about that time.

Interrogatory 16th If, in reply to the last preceeding question, you say you did know said party, then state what has become of him, and also whether he is reputed to be dead or not; and, if so, how long since. State also how long since he left said county. State as fully as you can.

Answer. Said Gunn left Prescott many years ago; I cannot state the exact year, but I am quite sure it was before 1863. I have hear*h* that he settled in California. I do not remember of having heard that he is dead.

Interrogatory 17th. Are you acquainted with one Adolph Wehrman, the brother of the defendant, Frederick Wehrman, and
103 also with his wife, Augusta Wehrman? If yea, then state where said Adolph and his wife now live and how long they have lived there.

Answer. Yes; they live in the city of Prescott, Pierce county, Wisconsin. They have lived in Prescott thirty-five years or more, except, I think, one or two summers they lived on a small farm some three miles out; of this I am not quite certain, but think they did.

ANDREW RADER.

Subscribed in my presence and sworn to before me by the said Andrew Rader this fifth day of September, A. D. 1889.

J. S. WHITE,

[L. S.] *Notary Public, Pierce County, Wisconsin, and Commissioner.*

Witness fee, $1.50.

STATE OF WISCONSIN, } ss:
County of Pierce, }

E. H. IVES, a witness called on behalf of the complainants herein and residing in the city of Prescott, in the county of Pierce and

State of Wisconsin, more than one hundred miles from the place where this cause is to be tried, being first duly cautioned and sworn to tell the truth and being carefully examined, doth, in answer to the interrogatories propounded to him, depose and say:

Interrogatory 1st. State your name, age, place of residence, and occupation.

Answer. My name is E. H. Ives; my age is 68 years; my place of residence is city of Prescott, Pierce county, Wisconsin;
104 my occupation has been various since residing in Prescott: first merchant, then manufacturer, then lawyer and publisher, interwoven with some politics, including four terms as assembledmen and senator in the State legislature, now publisher of a newspaper, lawyer, and money-loaner.

Interrogatory 2nd. State how long you have lived in the town of Prescott, in Pierce county, State of Wisconsin.

Answer. I have lived in the city of Prescott, which was formerly the town of Prescott, in said county and near Prescott, since 1858.

Interrogatory 3rd. Are you acquainted with the plaintiffs in this action?

Answer. I am not.

Interrogatory 4th. Are you acquainted with the defendant, Frederick Wehrman? If yea, then state how long you have known him and where he has lived during that time.

Answer. I have known him ever since—soon after I came to Prescott, in 1858, during that time he has lived in the city of Prescott, except, I think, he moved out into Oak Grove, some four miles from Prescott, and remained a short time on a farm.

Interrogatory 5th. If, in reply to the last preceding question, you say that you have been acquainted with said Frederick Wehrman for the last thirty years, and that he has during that time lived in or near the town of Prescott, in Pierce county, Wisconsin, then state whether or not you know what has been his occupation during that time.

Answer. I cannot state what he was doing in 1862 and 1863, having been but little or around Prescott those two years, but
105 the rest of the time I have known him his business has been teaming, either draying on the streets or day teaming, part of the time, and part of the time working as a day laborer.

Sixth interrogatory. If, in reply to the last preceding question, you say that the occupation of the dependant has generally been that of a laboring man, then state what his occupation was during the month of December, 1859.

Answer. I cannot answer as to that specific month other than, from any knowledge of his usual occupation about that time, I suppose it was the same in that month.

Interrogatory 7th. If you say in reply to the last preceding question that defendant was engaged in farming at the time mentioned, then state how far from Prescott and to what extent he was so engaged in farming; or if you say he was engaged in laboring, then state as near as you can what kind of labor and how he was laboring.

Answer. I have no recollection of defendant having been engaged in farming. His labor was that of a common laborer for hire as a farm hand or other common laborer.

Interrogatory 8th. State that, if any, means said defendant had to your knowledge in the month of December, 1859. State fully.

Answer. He had no visible means in 1859, and if he had any invisible they never came to my knowledge, and his appearance and that of his family certainly indicated limited circumstances.

Interrogatory 9th. Was your acquaintance with defendant such at that time that if he had had property to any considerable extent you would have known it?

Answer. Yes. The country was then comparatively new
106 and I had dealings more or less with the people here generally in my store and otherwise and had good opportunity to know of their financial standing, the defendant included.

Interrogatory 10th. State, if you know, what defendant's financial standing then was—in December, 1859, and about that time—and what credit, if any, he had.

Answer. His financial standing in 1859 was low and his credit correspondingly limited.

Interrogatory 11th. From your knowledge of the man and his financial standing at the time referred to in the last question what would you say with reference to his ability to borrow three thousand dollars without security?

Answer. I do not think it would have been possible for him to have done it.

Interrogatory 12th. State whether or not you are and have been acquainted with the habits of the defendant with reference to the use of intoxicating liquors.

Answer. Yes.

Interrogatory 13th. If, in reply to the last preceding question, you say you do know what defendant's habits are and have been with reference to the use of intoxicating liquors, then state what those habits are and have been and how long they have been followed by defendant. State fully and whether the use of such liquors has been to excess or not; and, if so, how long.

Answer. He has been a user of intoxicating liquors ever since I knew him, and for more than twenty years has been indulging beyond moderation and a great deal of the time very excessively.

107 Interrogatory 14th. Were you acquainted with one J. R. Freeman, who use- to be the sheriff of Pierce county, Wisconsin, in or about 1860 or 1861? If yea, then state where said Freeman now is *as* what has become of him.

Answer. I was acquainted with said Freeman and knew of his being such sheriff. He moved away from Prescott, I think in 1862, to some Western State or Territory, and I have heard from some of his relations here that he died out there some two or three years ago.

Interrogatory 15th. State whether or not you ever knew one Smith R. Glen or Green, who was clerk of the courts in Pierce county, Wisconsin, alon- in the years 1860 or 1861.

Answer. Yes; I knew Smith R. Gre-n, who was clerk of the circuit court for Pierce county, Wisconsin, about that time.

Interrogatory 16th. If in reply to the last preceding question you say you did know said party, then state what has become of him and also whether he is reputed to be dead or not; and, if so, how long since. State also how long — he left said county. State fully as you can.

Answer. Said Green left Prescott, to the best of my recollection, about 1862 or 1863, and I have heard that he located somewhere in California; I cannot give the place where. I have heard rumor of his death, but nothing authentic, and have no knowledge on that subject.

Interrogatory 17th. Are you acquainted with one Adolph Wehrman, the brother of the defendant, Frederick Wehrman, and also with his wife, Auguste Wehrman? If yea, then state where said Adolph and his wife now live and how long they have lived there.

108 Answer. I am acquainted with them. They live in the city of Prescott, Pierce county, State of Wisconsin, and have resided there since I first knew them, in 1858.

E. H. IVES.

Subscribed in my presence and sworn to before me by the said E. H. Ives this 11th day of September, A. D. 1889.

[L. S.] J. S. WHITE,
Notary Public, Pierce County, Wisconsin, and Commissioner.

Witness fee, $1.50.

STATE OF WISCONSIN, } ss:
County of Pierce, }

CYRUS F. COWELL, a witness called on behalf of the complainants herein and residing in the city of Prescott, in the county of Pierce and State of Wisconsin, more than one hundred miles from the place where this *court* is to be tried, being first duly cautioned and sworn to tell the whole truth and being carefully examined, doth, in answer to the interrogatories propounded to him, depose and say:

Interrogatory 1st. State your name, age, place of residence, and occupation.

Answer. My name is Cyrus F. Cowell; my age is sixty-two years; my place of residence is Prescott, Pierce county, Wisconsin; occupation, painter.

Interrogatory 2nd. State your acquaintance, if any, with the parties to this suit.

Answer. I do not know the plaintiffs, nor either of them. I am acquainted with the defendant, Frederick Wehrmaan; have known him thirty-three or thirty-four years.

109 Interrogatory 3rd. Are you acquainted with or were — acquainted with one J. R. Freeman, who used to be sheriff of Pierce county, Wisconsin, in or about the year 1860 or 1861? If

yea, then state whether or not he was in any way related to you. State also where said Freeman now is, if you know, or whether he is living or not. If you say he is dead, then state how long since he died.

Answer. I was acquainted with said J. R. Freeman and know he was sheriff of Pierce county, Wisconsin, one term of two years, about 1860, 1861, or 1862; am not positive which two of these years. He was sheriff in 1861, but whether 1860 or 1862 was the other year of his term I cannot certainly say. Said Freeman was my brother-in-law; his wife, now widow, is my sister. Said Freeman is dead; he died about three years ago.

Interrogatory 4th. Are you *are* were you acquainted with one Smith R. Glenn or Smith R. Green, who use to be clerk of the courts in Pierce county, Wisconsin, along in 1860 or thereabouts?

Answer. I knew Smith R. Green, who was clerk of the circuit court for Pierce county, Wisconsin, in the year 1861. I do not know when his term commenced or ended.

Interrogatory 5th. State what has become of said party referred to in the last preceding interrogatory, and whether he is reputed to be dead or not.

Answer. He left Prescott many years since and I do not know where he now is, nor whether alive or dead.

CYRUS F. COWELL.

Subscribed in my presence and sworn to before me by the — Cyrus F. Cowell this 11th day of September, A. D. [L. S.] 1889.

110 A. S. WHITE,

Notary Public, Pierce County, Wis., and Commissioner.

Witness fee, $1.50.

In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

G. B. CONKLIN and E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.

STATE OF WISCONSIN, *Pierce County,* } *ss:*

I hereby certify that on the 5th and 11th days of September, 1889, before me, J. S. White, a notary public in and for the county of Pierce, in the State of Wisconsin, and the person agreed upon as commissioner in the annexed agreement hereto annexed, between the hours of 9 o'clock a. m. and 4 o'clock p. m. of said days, the witnesses named in said agreement, to wit, said Andrew Rader appeared on said 5th day and said E. H. Ives and Cyrus F. Cowell appeared on said 11th day, and each of said witnesses, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by the said depositions of each hereto annexed; and I further certify that the said depositions

were each then and there reduced to writing by me and each
111 carefully read to said witnesses respectively after being so reduced to writing, after which they were each subscribed in my presence and sworn to before me by said witnesses respectively, and said depositions have been by me retained for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that the reason why said depositions there taken was that said witnesses reside more than one hundred miles from the place of trial. I further certify that my fees for taking said depositions are twelve dollars, and the same is just and reasonable.

In testimony whereof I have hereunto set my hand and official seal, at the city of Prescott, county of Pierce, State of Wis-
[L. S.] consin, this 11th day of September, A. D. 1889.

J. S. WHITE,
Notary Public and Commissioner.

[Endorsed:] 93. Eqt. Filed Oct. 1st, 1889. A. J. Van Duzee, cl'k, by J. H. Bolton, dep'ty.

112 In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.

STATE OF IOWA, *Cherokee County,* } *ss:*

George W. Leboueveau, T. B. Conklin, Geo. W. Schee, Carlton Corbett, J. L. E. Pack, and Frank A. Turner, witnesses called on behalf of the complainants herein, and each being first duly cautioned and sworn to tell the whole truth and each being carefully examined, doth, in answer to interrogatories propounded to them, depose and say as follows:

113 In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.
} Stipulation for Taking Deposition.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that the depositions of G. W. Lebourveau, T. B. Conklin, Geo. W. Schee, Carlton Corbett, J. L. E. Peck, Frank A. Turner, and such other witnesses as the complainants may desire to examine may be taken on oral examination before James O'Donnel, Esq., a notary public in and for the county of Cherokee and

State of Iowa, who is hereby agreed upon as a commissioner for that purpose, said examination to be at Cherokee, Iowa, and commencing on the 19th day of September, 1889, at nine o'clock in the forenoon of said day and to continue until the said depositions are all taken and completed, and that said depositions when so taken may be used on the trial of said cause by the complainants, subject to all just exceptions not herein waived.

Notices of all kinds and the issuing of a commission or commissions and the appointment of examiners or commissioners by the court or clerk is hereby expressly waived.

And it is agreed that said depositions shall be returned by said James O'Donnell, Esq., either by mail or express to the clerk of the said court at Sioux City, Iowa.

Dated at Cherokee, Iowa, this the 19th day of September, 1889.

W. L. JOY,
E. C. HERRICK,
WARREN WALKER,
Attorneys for the Complainants.
J. W. BULL,
CHAS. A. CLARK,
Attorneys for the Defendant.

114 GEORGE W. LEBOURVEAU, of lawful age, being produced, sworn, and examined of the behalf of the complainants, testified and deposed as follows:

Interrogatory 1 and answer. My name is Geo. W. Lebourveau; my age is 62; residence, Cherokee, Cherokee county, Iowa, and my occupation, retired farmer.

Int. 2. How long have you resided in Cherokee county, Iowa?

Answer. Came here in 1856.

Int. —. Have you lived in this county continuously?

Ans. Yes.

Int. 4. Were you acquainted in 1862 in O'Brien county, Iowa?

Ans. I was acquainted with lands in the northwest and in O'Brien county.

Int. 5. What was your occupation in 1862 in Cherokee county, Iowa?

Ans. I went into the service of the United States Army from 1861 to 1864.

Int. 6. Were you here in Cherokee county during 1862?

Ans. I was stationed here for about 3 months, and was on the move, and was also in Woodbury, Plymouth, Cherokee, O'Brien, Clay, Dickinson, and Emmett counties.

Int. 7. What had been your occupation in Cherokee county from the time you came to the time you entered the service, in 1861?

Ans. Farming.

Int. 8. State whether or not you were acquainted with the value of lands in O'Brien county during the year 1862.

Ans. There wasn't any value. You could not sell land for any price. I knew the value of land here at that time and in O'Brien county—of wild and improved land generally.

115 Int. 9. State whether or not *whether* there was any settlement in O'Brien county, Iowa, in 1862.

Ans. No; Mr. Waterman and enough carpet-baggers to hold the offices.

Int. 10. You may state what, in your judgment, was the fair cash market value of good, first-class, wild, unoccupied prairie lands throughout O'Brien county during the year 1862.

Ans. Fifty cents an acre.

Int. 11. Is the character of the prairie lands in O'Brien county about the same throughout the county?

Ans. Yes.

Int. 12. Do you know where the towns of Hartley, Sanborn, Primghar are located in O'Brien county?

Ans. I do.

Int. 13. Do you know the general location of the land around the vicinity where these towns now are and through that locality generally in 1862?

Ans. I did.

Int. 14. Were you acquainted with lands in townships 96, 39, and 96, 41, and 97, 40, in O'Brien county, in 1862, or are you now acquainted with such lands so that you could describe any particular quarter section or congressional subdivision in said townships?

Ans. I did not know the land by sections or townships, only by general observations in going over the lands.

Int. 15. State whether or not the value you have given of the lands such as heretofore described in O'Brien county, Iowa, in 1862 applies to lands of the same kind in the townships and ranges to which your attention has been called.

116 Ans. It does.

Int. 16. State what, if any, demand there was for wild, unoccupied prairie land throughout O'Brien county, Iowa, in 1862.

Ans. There was not any demand for it.

Int. 17. About how lon- did that state of things exist and how long was it before there was a demand for lands in that locality?

Ans. There commenced to be a demand for land in 1868 & 1869.

Cross-examination:

Int. 1. When was the first railroad built in O'Brien county?

Ans. The first railroad was the Sioux City & St. Paul, built in 1871 & 1872, through the northwest corner of the county.

Int. 2. When was the first railroad built east and west through O'Brien county, and what was it?

Ans. The Chicago, Milwaukee & St. Paul, in 1878, running along the south line of the north tier of townships.

Int. 3. When was the next railroad built east and west through O'Brien county, and what was it?

Ans. The Chicago & Northwestern, in 1882, near the north line of the southern tier of townships.

Int. 4. When was the next line of railroad built through O'Brien Co., and when was it?

Ans. The Illinois Central, in 1887, starting from Cherokee, running through Primghar to Sheldon.

Int. 5. Are there any other railroads in that county at the present time?

Ans. No.

GEO. W. LEBOURVEAU.

117 Subscribed in my presence and sworn to before me by the said Geo. W. Lebourveau this the 19th day of September, 1889.

JAMES O'DONNELL,
Notary Public.

T. B. CONKLIN, of lawful age, being produced, sworn, and examined on benalf of the complainants, testified and deposed as follows:

Int. 1. State your name, age, place of residence, and occupation.

Ans. T. B. Conklin; age, 52; residence, O'Brien county, Iowa, and a farmer.

Int. 2. How lon- have you resided in O'Brien county, Iowa?

Ans. Since February, 1882.

Int. 3. You are one of the complainants in the case of T. B. Conklin *et al. vs.* Frederick Wehrman?

Ans. Yes, sir.

Int. 4. E. F. Conklin joined with you as a complainant, and she is your wife?

Ans. Yes, sir.

Int. 5. You are acquainted with the land described in the complaint, and when did you first become acquainted with it?

Ans. Yes, sir; in July, 1881.

Int. 6. At that time was the said land improved; and, if so, what improvements were on the same?

Ans. There was forty acres on the north side broken.

Int. 7. Do you know when said breaking was done?

Ans. It was done in the spring of 1881.

Int. 8. Upon what portion of the land in controversy was
118 this breaking done?

Ans. On the north eighty of the northwest quarter of section 33.

Int. 9. By whom was the breaking done?

Ans. By Skinner Brothers.

Int. 10. At that time was there any other improvements on the land in controversy?

Ans. No, sir.

Int. 11. From whom was the land in controversy purchased and by whom?

Ans. I obtained my deed from Carlos S. Greeley for 200 acres of the land in satisfaction of a bond to Skinner Brothers which had been assigned to me. I purchased forty of Frank Turner—I don't remember the date—and something like a year or such a matter after I purchased the south eighty by a deed from Greeley to sat-

isfy a bond which Greeley had given to one William Kenyon and which had been assigned to me.

Int. 12. You may now state what, if any, improvements the complainants have made upon the land in controversy, giving the time when made, as near as you are able.

Ans. In the spring of 1882 I broke about 200 acres—well, that might include the forty that was broke—and have since broken about 70 acres; I think that was in 1884; it was on the eighty I got from Kenyon. I have built a house, 16 by 24, a story and a half high, and finished throughout.

It was built in 1882, on the north eighty of the southwest quarter of the section; a barn, 16 by 64, eight-foot sides, with hay-
119 loft overhead. A frame barn was built by me in 1884.

There is a frame granary enclosed, tight floor and matched sides, and the same length of the barn and about ten feet wide; that was built in the fall of 1884. There are several corn-cribs that were put there in 1884, and fencing; a ten-acre pasture and feed-lots put there in 1884. A well was also dug in 1884. I believe that is the extent of the improvements.

Int. 13. Since the purchase of the said land what use have you been making of the land?

Ans. I have been farming it every year, either myself or rented it.

Int. 14. You may state, if you are able, the cost of the putting of the land in shape to be cultivated—the breaking.

Ans. I paid $2.25 per acre for the first 160 acres, and the last breaking I think I paid $2.50 per acre; that is for about 60 or 70 acres.

Int. 15. Was there any other expenditure in getting the land under cultivation aside from what you have mentioned?

Ans. Only my own labor and the expense of hired help.

Int. 16. What amount was so expended and for what purpose was this expenditure made?

Ans. The additional expenditure was in putting in the crop on the breaking; that was all.

Int. 17. At the time that you made the purchases of the land in controversy of which you have spoken what knowledge, if any, had you with reference to any defects in the title of said land or any adverse claims to the same or any portion thereof?

Ans. I had no knowledge of any defects in the title, nor
120 had I any knowledge of any adverse claim.

Int. 18. You may state what examination, if any, you made or caused to be made with reference to the title of the land in controversy at the time or times of the purchase thereof by you.

Ans. I went with my brother and consulted J. L. E. Peck, an attorney-at-law and then auditor of O'Brien county, and inquired of him with regard to the title of this land and described the land to him. He examined the records of the matter and reported to us that the title was good, that the county commissioners considered it good and would loan school funds on the land. He spoke of this Wehrman, a man in Wisconsin—that the land had been sold to

satisfy a judgment against Wehrman. I remember that he went to the records to ascertain with regard to service of notice of this suit, and reported that he had personal service. I remember that point. He said he had personal service, but whether it was in Wisconsin or Iowa I don't remember, or whether he said where it was. I think he said in Wisconsin; I would not swear whether he did or not. He also spoke of a tax title; that Greeley also had a tax title. I don't remember whether he said how far back the tax title extended or not. He considered the title good and I bought the land upon his judgment and recommendation.

Int. 19. Do you recollect whether he found the papers or files in the suit against Wehrman of which you spoke?

Ans. I don't think at that time that he did any more than that he went and ascertained personal service of the notice. I
121 don't know what he looked at. He took down what appeared to be a small light book.

Int. 20. This examination was made at what time?

Ans. It was made in July, 1881.

Int. 21. At the time of the subsequent purchases of which you have spoken was there any examination made of the records?

Ans. No; I heard no question with regard to the title to the lands up to the time I made those subsequent purchases, and never until the ejectment suits were commenced by Wehrman in the United States court, out of which this suit grows.

Int. 22. At the time that you made the payments for the respective purchases of which you have spoken, and at the time the improvements were made with reference to which you have testified, what knowledge, if any, had you that Wehrman, the defendant herein, made any claim to said lands or any part thereof?

Ans. I had no knowledge whatever.

Int. 23. Since your purchase of said lands by whom have the taxes been paid thereon?

Ans. By myself.

Int. 24. You may state, if you are able, the consideration paid by you for the respective tracts of land purchased by you and in controversy in this suit.

Ans. The first 200 acres, I think, I paid seven dollars and fifty cents per acre. I *I* paid that to Schee & Achorn, who were agents for Greeley. That covered the purchase of the contracts held by Skinner Brothers. What portion went to Greeley and what to Skinner Brothers I do not know. The forty I bought of Turner I paid five dollars and a quarter per acre for. The eighty I bought
122 from Kenyon was nine or nine and a half dollars per acre; I can't tell which; I think nine dollars an acre, though.

Int. 25. Were you acquainted with the value of lands in O'Brien county, Iowa, at the time you made these purchases?

Ans. Very slightly; only what I learned by a few weeks' visiting.

Int. 26. State whether or not you paid the full value of the land purchased.

Ans. I think I did.

Int. 27. What kind of land was this?

Ans. It was what you might call high rolling prairie.

Int. 28. How does it compare as to value and quality of land with unimproved land in O'Brien county?

Ans. It is number one, first-class land. There are other lands equally as valuable.

Int. 29. You may state the facts with reference to the purchase and improvement of said land by you, as to whether the same were purchased and made in good faith by you or otherwise.

Ans. They were purchased and the subsequent improvements were made in good faith and supposing myself to be absolute owner then, henceforth, and forever.

Int. 31. Since your purchase of said lands have you made any loan upon the same? And, if so, state when the loans were made and from whom and the amount.

Ans. I obtained a loan on this half section of $1,500 of the Empire Loan and Investment Company, at Sheldon, Iowa, in the fall of 1886, I think.

123 Int. 32. Have you in your possession or under your control any of the deeds in the chain of title aside from the ones you got from Greeley and Turner?

Ans. No.

Int. 33. Have you in your possession the bonds of which you have spoken?

Ans. Yes, sir; there are at home.

Int. 34. Please produce them so they can be marked as exhibits to your answer.

Ans. I haven't them with me, but will produce them and send them to the commissioner if I can find them.

Int. 35. Who transacted the business in the purchasing and paying for the lands in controversy and the making of the improvements thereon?

Ans. I did it all except some part of the business that my brother transacted for me when I was away. I sent him funds to pay out for me and he paid them out.

Int. 36. What, if anything, had your wife to do with reference to the purchasing and paying for any of this land?

Ans. She had nothing to do with it.

Cross-examination:

And on cross-examination said witness testified as follows:

X Int. 1. Did you receive an abstract of title when you made your first purchase of this land?

Ans. I think not at the time we made the bargain for it.

X Int. 2. When did you get an abstract of title of that first tract purchased, if at all?

Ans. If I had an abstract at all I got it about the time I got the deed. I am in doubt whether I have an abstract.

124 X Int. 3. How can you ascertain whether you have an abstract of that tract?

Ans. By examining the papers at home; or, possibly, Mr. Herrick may have the papers.

— Int. 4. Mr. Herrick produces abstract of the northwest quarter, in section 33, township 96, range 39; will you attach said abstract to your deposition as Defendant's Exhibit No. 1?

Ans. Yes, sir; I will.

(The said abstract is hereto attached and marked Defendant's Exhibit One.)

X Int. 5. Is this northwest quarter the tract of land in controversy first purchased by you?

Ans. It is included in the 200 acres first purchased.

X Int. 6. This abstract of title, Exhibit One, is dated May 30, 1883. Did you receive the abstract about that time?

Ans. I got the abstract at about the time it is dated, when I got a school-fund loan as shown in the abstract.

X Int. 7. If you have any other abstract or abstracts of the land in controversy at home will you produce them and have them annexed to your deposition?

Ans. Yes, sir; but it is my opinion that I have not got any.

X Int. 8. Did you understand at the time of your first purchase that the title of Greeley was based upon a judicial sale against Wehrman, the former owner of the land?

Ans. I did.

X Int. 9. Did you also understand that there was a tax deed on the land and that Greeley claimed title or held this tax title?

Ans. I did.

X Int. 10. Have you ever rented any of this land in controversy?

125 Ans. Yes, sir.

X Int. 11. What year did you first rent any of it?

Ans. It was the second year I owned it.

X Int. 12. How much of it did you rent the second year?

Ans. I rented all that was broken.

X Int. 13 What rent did you realize from it?

Ans. One-third of the grain.

X Int. 14. Were there buildings on the land at that time?

Ans. Yes, sir.

X Int. 15. About what did you realize for the rent of the land in money for the year 1883?

Ans. It is difficult for me to say. I have a half section near it that I live on within forty rods of joining it, and my share of the grain was hauled there and fed and not much sold for cash. I sold about four hundred bushels of wheat for the first year's rent at, I think, 60 cents a bushel. That was the only cash sale I made that year of grain from that place.

X Int. 16. How much of the land which you rented that year was in wheat and how much in other crop?

Ans. 100 acres of it was in wheat, about 60 acres of corn, and the balance was in oats. That would be about 30 acres.

X Int. 17. What, in your judgment, was the total value of your

share of the crops received from the place that first year you rented it?

Ans. I remember it was quite a light crop of corn. I will estimate the total receipts at about $420.00.

X Int. 18. When did you next rent any part of the land in question; how much and on what terms?

126 Ans. I rented a quarter to one man that lived on the place and the other quarter to a single man that lived with the first man in 1884 for one-third of the crop.

X Int. 19. What is your judgment as to the value of the crop received by you for that year?

Ans. It was scarcely anything on the north quarter. I presume I might have got $200 worth of produce from the half section that year and no more.

X Int. 20. When did you next rent the land or any part of the land in controversy; how much and on what terms?

Ans. The next renting was for 1889, the past season, and the terms one-third of the grain.

X Int. 21. Give your judgment as to the probable result this year.

Ans. It's guess-work what I realize out of the present crop. I worked 50 acres myself and think I will realize about $280.00 from that part rented.

X Int. 22. Have you ever made your home on this land in controversy or any part of it?

Ans. No; I never lived on ot with my family. I have worked it in connection with the balance of my farm.

X Int. 23. You spoke of owning a half section near this land in controversy. When did you purchase that half section?

Ans. In the fall of 1881 I bargained for it; got my deed in the spring of 1882.

X Int. 24. What did you pay for this half section?

Ans. For the quarter on which I lived I paid $8.50 per acre. There were sixty acres broken on it. I paid five dollars for an eighty—five dollars per acre—and seven dollars an acre for 105 acres, it being a fractional section.

127 X Int. 25. Have you made the home of yourself and family on this half section outside of the Greeley or Wherman land?

Ans. Yes, sir.

Redirect examination:

And on redirect examination said witness testified as follows:

Int. 1. Had you any information, with reference to the land purchased by you, other than that which you derived from J. L. E. Peck—that is, with reference to the title?

Ans. I think I inquired of Schee & Achorn about the title. They were agents for the land and represented the title all right.

T. B. CONKLIN.

Subscribed in my presence and sworn to before me by the said T. B. Conklin this the 19th day of September, 1889.

JAMES O'DONNELL,

[SEAL.] *Notary Public.*

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Grantor.	Grantee.	Character of instrument.	Date of instrument. Mo.	Day.	Year.	Date of filing. Mo.	Day.	Year.	Record. Book.	Page.	Description of property. Part of section.	Sec. or lot.	T'p or bl'k.	Range.	Remarks.
United States	Adolph Wehrman	Entry	5	7	1857						N w ¼	33	96	39	
Adolph Wehrman	Frederick Wehrman	W't'y deed	Dec.	17	1859	Jan'y	2	1860	D R	173	N w ¼	"	"	"	
Sheriff O'Brien county	Carlos S. Greeley	S. "	"	31	1864	Jan'y	28	1865	A	510	N w ¼	"	"	"	On judg't *vs.* Adolph W.
" " "	" "	" "	"	"	"	Oct.	12	1870	D	367	N w ¼	"	"	"	" " "
Treas. " "	Chas. C. Orr	" "	June	28	1866	July	7	1866	2	147	N w ¼	"	"	"	Should not have been deeded.
Chas. C. Orr	Carlos S. Greeley	Q. C. "	May	26	1871	May	29	1871	E	26	N w ¼	"	"	"	
Greeley, Gale & Co.	Adolph Wehrman *et al.*	Decree	June	10	1862	Aug.	18	1870	D	333	N w				Setting aside deed from Adolph W. to F. W., grounds of fraud.
Carlos S. Greely, widower	J. and T. Skinner	B. for deed	Apr.	13	1881	Oct.	12	1881	O	165	N w				Agrees to convey for $750.00.
John & Thomas Skinner	T. B. Conklin	Ass'm't	Sept.	28	1881	"	"	"	O	167	N w				Ass'nt of bond for deed.
Carlos S. Greeley, widower	T. B. & Emma Conklin	W't'y deed	Feb'y	23	1882	M'ch	17	1882			N w ¼	"	"	"	
T. B. & Emma Conklin	O'Brien Co.	Mtg	M'ch	29	1883	June	9	1883			N w ¼				$500.00 for 5 years, 8 %.

No judgments.

STATE OF IOWA, }
O'Brien County, } *ss:*

I hereby certify that I have carefully searched the records of said county and find no conveyances affecting the title to the land above described except those shown upon the face of this abstract.

Given under my hand, at Primghar, Iowa, this 30th day of May, A. D. 1883.

J. L. E. PECK,
County Auditor.

129 GEORGE W. SCHEE, being produced, sworn, and examined on behalf of the complainants, testified and deposed as follows:

Int. 1. State your name, age, place of residence, and occupation.

Ans. Geo. W. Schee; age, 41; residence, Primghar, Iowa, and occupation, real estate.

Int. 2. How long have you resided in O'Brien county?

Ans. Since 1871.

Int. 3. Have you occupied any official position in O'Brien county; and, if so, what and when?

Ans. From 1876 to 1880 I was county auditor.

Int. 4. Do you know the land in controversy in this suit?

Ans. Yes, sir.

Int. 5. Did yourself or the firm of which you were a member sell and dispose of any portion of the lands conveyed by the sheriff of O'Brien county, Iowa, to Carlos S. Greeley?

Ans. Yes, sir.

Int. 6. Did you have occasion to examine the records of O'Brien county with reference to the title to said land?

Ans. I had.

Int. 7. About what time did you make your first examination with reference to the title to said land conveyed by the said sheriff's deed?

Ans. The winter of 1880 and 1881.

Int. 8. At that time did you find the original papers or files in the case Greeley, Gale & Co. against Adolph Wehrman, Augusta Wehrman and Frederick Wehrman, an equity suit?

Ans. Not that I remember of.

Int. 9. Do you recollect of examining the decree entered in said cause?

Ans. I do.

Int. 10. Do you recollect with reference to the complainant in this action, T. B. Conklin, applying to you to purchase any portion of this land?

Ans. He came to us to buy some land. I don't remember about the details, as Achorn, the other member of the firm, attended to them.

Int. 11. Do you recollect with reference to any representations made by yourself or your partner with regard to the title to the complainant T. B. Conklin?

Ans. I do not. I would say this, we thought the title good and so represented, but as to saying just whom we so told I don't remember.

Int. 12. Were you acquainted with the values of land in O'Brien county during the period of your residence there?

Ans. Yes, sir.

Int. 13. Are you acquainted with the west half of section 33, 96, 39, in O'Brien county, Iowa?

Ans. Yes, sir.

Int. 14. You may state, if you are able, what the value of that

half section of land was per acre in 1871, when you first came to that county.

Ans. About two to two and a half an acre.

Int. 15. What are the facts with reference to there being a demand for lands or otherwise in O'Brien county, Iowa, at that time?

Ans. There was a good deal of Government land to be
130 taken by homestead and pre-emption. There was very few sales of patented land and scarcely any demand.

Int. 16. Up to what time did this state of things continue?

Ans. 1878 and 1879; after the Milwaukee road went through east and west it made some demand for lands.

Int. 17. At the time of the purchase of the land by the complainant T. B. Conklin what was the value of the land in controversy at that time—that is, along in the year 1881?

Ans. In the spring of 1881 land was selling from four to five dollars an acre and in the fall from six to eight dollars an acre, owing to the locations. That was for wild, unimproved, good prairie lands.

Int. 18. You may state what the south half of the southwest quarter of section 33, township 96, range 39, was worth per acre in the year 1882.

Ans. As wild land it was worth about $7 *dollars* an acre.

Int. 19. During the year of your acquaintance with this land do you know who was paying the taxes on the land?

Ans. I do.

Int. 20. You may state who paid the taxes and through whom the same was paid.

Ans. My firm paid the taxes for C. S. Greeley, of St. Louis.

Int. 21. Up to what time did you pay them?

Ans. Up to the time they were sold by Greeley.

Int. 22. You may state whether or not he paid upon all the lands embraced in the sheriff's deed to him.

Ans. He did pay on them all while he owned them.

Int. 23. You may state, if you are able, the kind of lands sold under the execution and conveyed by the sheriff's deed of which you have spoken to Greeley.

Ans. They are a good quality and good average land for the whole county.

Int. 24. Are you acquainted with one Frank Turner, who on the 11th of October, 1881, conveyed the northeast quarter of the southwest quarter of section 33, 96, 39, to T. B. Conklin, one of the complainants in this case?

Ans. I am.

Int. 25. Did you know with reference to his purchase of the said land?

Ans. I did.

Int. 26. You may state the facts with reference thereto.

Ans. Mr. Turner was clerking for the firm of Schee & Achorn. They bought land in his name and this forty was bought of Greeley in Turner's name for the firm of Schee & Achorn. Achorn, my partner, was under age all this time. Turner had nothing to do

with the purchase of the land. We furnished the money. We paid Mr. Turner ten dollars a month extra while he worked for us for the use of his name to buy land in. That was on account of my partner being under age.

Int. 27. You may state what, if anything, you knew at the time of the purchase of said land and the payment therefor, or that said firm knew at that time with reference to any defects in the title of Carlos S. Greeley, from whom you bought, or with reference to any claim made by the defendant, Wehrman, to said land or any part thereof.

131 Ans. We knew of no defects and supposed the title was good, and we knew of no claim made by Wherman to the land.

Int. 28. State what you paid for the land and whether you paid the fair cash value for the same.

Ans. We paid the fair cash value, but I don't now know the exact amount.

No cross-examination.

GEO. W. SCHEE.

Subscribed in my presence and sworn to before me by the said Geo. W. Schee this 19th day of September, A. D. 1889.

JAMES O'DONNELL,
[SEAL.] *Notary Public.*

CARLTON CORBETT, being produced, sworn, and examined on behalf of the complainants, testified and deposed as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. Carlton Corbett; age, 58; residence, Cherokee, Iowa, and occupation, real estate.

Int. 2. How long have you resided in Cherokee county, Iowa?

Ans. Since the summer of 1856.

Int. 3. What has been your business or occupation?

Ans. Up to 1860 I was farming. Since then I have been in the real estate, off and on.

Int. 4. Were you acquainted with the valur of real estate in O'Brien county, Iowa, during the year 1862?

Ans. I was.

Int. 5. Do you know where the west half of section 33, 96, 39, is?

Ans. I could not describe the section, but have been in the township.

Int. 6. What is the quality of the land throughout that region?

Ans. It is prairie land, rather flat, good average quality.

Int. 7. In 1862 what can you say with reference to the improvements in O'Brien county, Iowa?

Ans. There were no improvements that I remember in that township.

Int. 8. What improvements do you recall in the county in that time?

Ans. There was what we called Old O'Brien, in Waterman township, and I think that was all the improvements in the county.

Int. 9. How much of a population had O'Brien county in those days?

Ans. I shouldn't think more than 15 to 20.

Int. 10. What, in your judgment, was the value of the west half of 33, 96, 39, in O'Brien county, Iowa, in July, 1862, per acre?

Ans. That is a pretty hard question to answer; couldn't sell any land in those days at any price. I should say they were worth about seventy-five cents an acre.

Int. 11. You may state what at that time was the value per acre of good farming lands in O'Brien county, Iowa, at that time generally in the county—that is, unoccupied prairie lands.

Ans. Seventy-five cents an acre.

Int. 12. When did the values of lands in O'Brien county, Iowa, commence to increase?

Ans. About the year 1869.

Int. 13. And what are the facts with reference to the increase for a few years from that period, rapid or otherwise?

132 Ans. Not very rapid.

No cross-examination.

CARLTON CORBETT.

Subscribed in my presence and sworn to before me by the said Carlton Corbett this the 19th day of September, 1889.

JAMES O'DONNELL,
Notary Public.

[SEAL.]

J. L. E. PECK, being produced, sworn, and examined on the part of the complainants, testified and deposed as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. J. L. E. Pec*l;* 37 years old; residence, Primghar, Iowa, and occupation, attorney and banker.

Int. 2. Are you acquainted with the parties to this suit; and, if so, how long have you known them?

Ans. I am acquainted with the complainants, but not the defendant; have known complainants since the spring or summer of 1881.

Int. 3. Do you remember of the complainant T. B. Conklin purchasing some land in O'Brien county, Iowa, fro*n* one Carlos S. Greeley in the year 1881?

Ans. I do.

Int. 4. What was your business at that time?

Ans. Attorney-at-law and abstracter of titles.

Int. 5. Do you remember of the complainant T. B. Conklin coming to you and asking you about the Greeley title to the land?

Ans. Yes, sir; I remember he did.

Int. 6. State what you did in the way of making an examination of the title to the land said Conklin was proposing to buy of said Greeley.

Ans. I made a full examination of the records of O'Brien county up to that time, including the records of all four offices of the

county—the treasurer's, the recorder's, the auditor's, and the clerk's office. I found the deed from Adolph Wehrman to Frederick Wehrman, and, finding no deed to any subsequent grantee from Frederick Wehrman, I examined particularly the decree in a case entitled Greeley, Gale & Co. *vs.* Adolph Wehrman, Frederick Wehrman, and Augusta Wehrman, and observed particularly at that time that Augusta Wehrman was a party, she being the wife of Adolph. I had a conversation with T. B. Conklin, the complainant, with the particular reference to the manner of service of notice upon the three defendants as recited in the decree and went back a second time, after our conversation, to look at that part in particular and saw that it recited the fact that personal service had been made. I had a further talk with Mr. Conklin and told him that I wished to see particularly that it was not made by publication, as I did not give much credit to a publication service; but as it particularly recited a personal service on all three parties and as the decree seemed to me otherwise good that I thought the title was good.

Int. 7. What, if anything, did you say about the tax title on the land?

133 Ans. We talked—or I told him that the Frederick Wehrman title was what we called an old-fee title, and that the treasurer's deed to C. C. Orr, issued in 1866, being then some 15 years old, all taken together, satisfied me that the title was certainly beyond dispute. I also called his attention to the fact that the patent had not been recorded in O'Brien county, but that it could be procured from the Commissioner of Patents at Washington at any time for a $1.60, and that was but a formal matter and did not relate to or effect the title.

Int. 8. State whether you made any search for the original papers in the case you referred to above in which the decree reciting personal service was made; and, if so, what the result was.

Ans. Yes, sir; I did look for the original papers. In fact, I have looked for them at various times, as this title has come up on different occasions, but I was more particular in this particular case, for the reason that Mr. Conklin pried me with more questions about the title than any other party who had me look up this Wehrman title. I went over this title for, I suppose, a dozen different parties. I failed to find the original papers or any of them. Mr. Turner and myself have together looked for the papers and did then at that time that Conklin was buying. He was clerk of the courts or deputy at that time. He has been there until this term since 1881.

Int. 9. State whether or not the tax title to this land—that is, what is known as the Orr tax title—was then supposed generally to be good or not.

Ans. It was supposed to be good at that time, there having been at that time no litigation about it, which has since then arisen.

Int. 10. State what, if anything, you said to Mr. Conklin about the county loaning money on the title.

Ans. I told him that I was satisfied that the county would loan on the title, and I believe I told him that I would loan to him for

the county, being then auditor, and about two years after this I made him such a loan of $500, that being then the highest limit then allowed by the county.

Int. 11. How long and where had you been in practice as an attorney at the time you gave Mr. Conklin this opinion about the said title?

Ans. I had been in practice in Decorah, Iowa, from August, 1874, until July, 1877, and then in O'Brien county from August, 1877, until that time.

Int. 12. Can you state the description of the land which Mr. Conklin was then buying?

Ans. The northwest quarter of section 33, township 96, range 39. I don't remember the other forty.

Int. 13. Did Mr. Conklin complete the purchase of the land after your examination of the title?

Ans. Yes, sir; he did.

Cross-examination:

X Int. 1. When did you commence to serve as county auditor of O'Brien and how long did you continue in that position?

Ans. From January 1st, 1880, until January 1st, 1884; four years.

134 X Int. 2. Were you engaged in the active practice of the law during the time you were county auditor?

Ans. Yes, sir.

X Int. 3. In making this search of the title for Mr. Conklin did you observe that the deed from Adolph Wehrman to Frederick Wehrman antedated the attachment proceedings of Greeley, Gale & Co. against Adolph Wehrman?

Ans. Yes, sir.

X Int. 4. Did you in making that search make any efforts to find the papers in the attachment suit against Adolph Wehrman?

Ans. I made an effort to find with the clerk any or all of the papers that we could find with reference to the suits that had been brought against the Wehrmans.

X Int. 5. Did you try to find the papers in the attachment proceedings?

Ans. There was no different search made for that than was made for the whole.

X Int. 6. Was there any search of any kind made for the papers in the attachment suit, either separately or in connection with the papers in the equity suit?

Ans. I don't know that we did other than to look in the clerk's office for any other papers we could find, and we could find none.

X Int. 7. Did you observe at that time that the venue in the attachment case had been changed to Woodbury county, and that the judgment in that case was rendered by the district court of Woodbury county?

Ans. I recollect observing that it was rendered in Woodbury county. I do not recollect of the question of the venue or change of venue coming to my notice.

X Int. 8. Did you examine the encumberance book at that time to see whether it showed an attachment of the lands in the attachment suit?

Ans. I do not recollect, as to this particular case, as to that fact, other than to say that I always run the encumbrance book in making abstracts or examining titles. I recollect having this talk with Mr. Conklin; that we talked about the judgment that had been rendered on which this sheriff's deed had been issued, and that this decree referred to it, and that the decree ordered that the lands be sold to satisfy this judgment held by Greeley, Gale & Co.

X Int. 9. You knew as a lawyer, did you not, that, whether the attachment suit was commenced in Woodbury county or sent there on change of venue, that the clerk's office in Woodbury county would be the proper place to look for the original papers in that suit?

Ans. I don't think that the question as to where it was rendered or change of venue was considered; that I simply considered that a judgment was rendered, and that the three parties were brought into court and an adjudication had that the land be sold. I did know that the original papers in the attachment case would be in either case asked about found in Woodbury county.

X Int. 10. Did you make any inquiries at the clerk's office in Woodbury county, Iowa, in connection with your examination of this title for Mr. Conklin, for the papers in the attachment suit against Adolph Wehrman?

135 Ans. No, sir; I did not.

X Int. 11. Did you at that time or afterwards find or see the original papers in the equity suit against the Wehrmans?

Ans. No, sir.

X Int. 12. Did you talk with Mr. Conklin at that time to see where the Wehrmans resided?

Ans. No, sir; I think not, but have since; I think I have; I have with some of the parties.

X Int. 13. In the abstract of title marked Defendant's Exhibit No. 1 to deposition of T. B. Conklin in this case, signed by you, it is said, in remarks opposite the conveyance from treasurer of O'Brien county to Charles C. Orr, "Should not have been deeded." Why was that statement made in the abstract?

Ans. I could not say. It may possibly have been put there as intending to say that Adolph Wehrman should not have deeded to Frederick. I don't recollect the reason.

X Int. 14. Is the abstract of title in your handwriting?

Ans. Yes; the whole abstract and that statement.

Redirect:

Int. 1. State whether at the time you made the examination you knew that when cases were changed from one county to another the clerk was required to keep copies of the original papers in his office.

Ans. Yes.

Int. 2. State whether or not you were familiar with the records

in the clerk's office at that time, and state how long you had been familiar with them.

Ans. Yes, sir; I was. I had been examining the records for about four years at that time.

Int. 3. State the reason why you did not make an examination of the records in the attachment case in Woodbury county.

Ans. I don't think the question ever came up. We looked for any papers we could find.

Int. 4. Did the facts that the equity decree settled the rights of the parties suggest itself to your mind as a reason that the records in the attachment suit were not essential?

Ans. I just considered it in this way, that all parties were brought into court in the equity suit, and that all rights that either of them could have were adjudicated in that suit without reference to any prior proceedings.

Recross-examination:

X Int. 1. Did you suppose if there was not any attachment at all that the decree would effect the interest of the Wehrmans?

Ans. I knew that the sheriff would have to make his levy, of *of* course, under the order of the decree.

X Int. 2. Did you think that a levy after this decree was all that was requisite?

Ans. I don't think that I went into it that close at that time.

J. L. E. PECK.

Subscribed in my presence and sworn to before me by the said J. L. E. Peck this the 19th day of September, 1889.

JAMES O'DONNELL,
[SEAL.] *Notary Public.*

136 FRANK A. TURNER, being produced, sworn, and examined on behalf of complainants, testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. Frank A. Turner; age, 34; residence, Primghar, Iowa, and occupation, deputy clerk of courts.

Int. 2. State whether or not you were clerk of the courts of O'Brien county, Iowa, at any time; and, if so, and of the district court of said county, state when and how long.

Ans. I was clerk of the district and circuit courts of O'Brien county, Iowa, from January 1st, 1883, to January 1st, 1889.

Int. 3. State whether or not as such clerk you had in your custody and possession the records of the district court of O'Brien county, Iowa, during the time you were such clerk.

Ans. I had; yes, sir.

Int. 4. State whether or not you remember of ever making any search for the original papers in the case of Greeley, Gale & Co. *vs.* Adolph Wehrman, Augusta Wehrman, and Frederick Wehrman, a suit in the district court in said county of O'Brien; and, if so, what the result of such search was.

Ans. I remember looking for them and I found them.

Int. 5. State when this was.

Ans. That is a hard question. Just after I went into the office; it might have been when I was deputy. I think that was the time.

Int. 6. For whom were you looking for the papers?

Ans. I don't know.

Int. 7. Did you ever see the papers after that time?

Ans. I did.

Int. 8. When and who were present?

Ans. Mr. J. W. Bull was present. It was three or four years ago.

Int. 9. Have you ever looked for the papers since or seen them since that time?

Ans. I have looked for them since, but never found them from that time.

Int. 10. Do you know anything about what became of the papers?

Ans. I do not.

Cross-examination:

And on cross-examination said witness testified as follows:

X Int. 1. Do you know Mr. H. E. Long, of Des Moines?

Ans. I am sorry to say that I do.

X Int. 2. Did you at any time make an examination to find these papers for Mr. Long or with him?

Ans. I don't remember, although I may have.

X Int. —. Do you wish to be understood as intimating or suggesting that these papers were taken away by Mr. J. W. Bull?

Ans. I don't wish to intimate anything of the kind.

FRANK A. TURNER.

Subscribed in my presence and sworn to before me by the said Frank A. Turner this the 19th day of September, 1889.

JAMES O'DONNELL,
Notary Public.

[SEAL.]

137 In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.

STATE OF IOWA, *Cherokee County,* } *ss:*

I hereby certify that on the 19th day of September, A. D. 1889, before me, a notary public in and for Cherokee county and State of Iowa and the person agreed upon as commissioner in the annexed agreement, personally appeared before me pursuant to the said

agreement the witnesses named in said agreement, to wit, Geo. W. Lebourveau, T. B. Conklin, Geo. W. Schee, Carlton Corbett, J. L. E. Peck, and Frank A. Turner, at Cherokee, Iowa, between the hours of nine o'clock in the forenoon and ten o'clock in the afternoon of said day, and each of the said witnesses, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears in and by the said depositions of each hereto annexed. I further certify that I have hereto attached all exhibits produced before me on said examination.

And I further certify that said depositions were each of them caused by me to be reduced to writing in the presence of said witnesses respectively, except the deposition of said Geo. W. Lebourveau, which was by me reduced to writing in his presence, and were, after they had been so reduced to writing, subscribed by said witnesses respectively in my presence and sworn to before me by them, and said depositions have been by me retained for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that I am not of counsel or attorney to either of the parties nor am I interested in the event of the cause; that at said examination E. C. Herrick, Esq., and W. L. Joy, Esq., appeared as attorneys for the complainants and conducted the examination on their behalf, and that Charles A. Clark, Esq., appeared as attorney on behalf of the defendant and conducted the cross-examinations.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Cherokee, in the county of Cherokee and State of Iowa, this the 19th day of September, 1889.

JAMES O'DONNELL,
[SEAL.] *Notary Public.*

138 I hereby certify that the following is a correct statement of the fees on the within depositions:

Commissioner's fees for taking deposition	$5 00
Postage	20
Total	$5 20

Witness Fees.

Geo. W. Schee, 1 day, 25 miles	$4 00
J. L. E. Peck, 1 " " "	4 00
F. A. Turner, 1 " " "	4 00
Carlton Corbett, " 1 "	1 60
Geo. W. Lebourveau, " "	1 60
	$15 20

JAMES O'DONNELL,
[SEAL.] *Notary Public.*

Received my fees, $5.20, of the complainants.

JAS. O'DONNELL.

139 [Endorsed:] 93. Eq. In the circuit court of the United States in and for the northern district of Iowa, western division. T. B. & E. F. Conklin, complainants, *vs.* Frederick Wehrman, defendant. Deposition taken on behalf of complainants. Filed Oct. 1st, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

140 And on the first day of October, A. D. 1889, there was filed in the office of the clerk of said court in said cause the deposition of Andrew Rader, E. H. Ives, Cyrus F. Covill, and Carlos S. Greeley, witnesses on behalf of complainants; which depositions are in the words and figures following, to wit:

United States Circuit Court, Northern District of Iowa, Western Division.

T. B. CONKLIN & E. F. CONKLIN
vs.
FREDERICK WEHRMAN.

It is agreed by the parties to the suit above entitled that the deposition of Carlos S. Greeley may be taken on the interrogatories and cross-interrogatories hereto annexed before Charles D. Greeley, Jr., who is agreed upon as a commissioner for that purpose, at St. Louis, in the county of ——, in the State of Missouri, on the 20th day of September, 1889, or on any day or days between the day last named and the first day of October, 1889, said deposition to be used on the trial of the above cause by the complainants.

The notice and copy of interrogatories and suing out a commission, as required by law, and appointed of examiners or commissioners is hereby waived, but said deposition to be subject to all just exceptions not herein waived.

E. C. HERICK,
W. L. JOY & WARREN WALKER,
Attorney- for Plaintiff-.
J. W. BULL,
CHAS. A. CLARK, *Attorney- for Defendant.*

Cherokee, Iowa, August 17, 1889.

141 In United States Circuit Court, Northern District of Iowa, Western Division.

T. B. CONKLIN & E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.

Deposition of witness produced, sworn, and examined before me, Charles D. Greene, Jr., special commissioner, at my office, No. 311 Olive street, in the city of St. Louis, in the State of Missouri, on the twenty-seventh day of September, A. D. 1889, by virtue of the annexed agreement and upon the interrogatories thereto attached, to be read as evidence in a certain suit now pending in the circuit court of the United States for the northern district of Iowa, western division, wherein T. B. Conklin and E. F. Conklin are complainants and Frederick Wehrman is defendant, on behalf of the said complainants.

Deposition of Carlos S. Greeley.

The said CARLOS S. GREELEY, being first duly sworn, doth depose and say, in answer to the several interrogatories, as follows, to wit:

1st interrogatory. State your name, age, place of residence, and occupation.

Answer. My name is Carlos S. Greeley; I am seventy-eight years of age; I reside in the city of St. Louis, Missouri; I am a merchant.

2nd interrogatory. Are you acquainted with the parties to this action or either of them; and, if so, how long have you known
142 them or either of them?

Answer. I do not know either of the parties.

2nd interrogatory. Are you the same Carlos S. Greeley who purchased at a sheriff's sale in O'Brien county, Iowa, some 2,160 acres of land sold under an execution from Woodbury county, Iowa, in the case of Greeley, Gale & Co. against Adolph Wehrman, in the year 1862?

Answer. I am the same person.

3rd interrogatory. State whether or not you were a member of the said firm of Greeley, Gale & Co., and give the names of each member of the said firm.

Answer. The firm name was "Greeley & Gale," and said firm was composed of Daniel B. Gale and myself.

4th interrogatory. State whether or not you remember of the said firm of Greeley, Gale & Co. having a claim in the form of some notes against one Adolph Wehrman, of Prescott, in Pierce county, Wisconsin, in the year 1859, and of said firm having a suit brought in said Pierce county on said claim against said Adolph Wehrman.

Answer. I remember all of the points referred to.

5th interrogatory. If you answer yea to the last porceeding question, then state whether or not you remember of a suit having been brought in O'Brien county, Iowa, on said claim after judgment in the said court in the said Pierce county, Wisconsin.

Answer. I do remember. The suit in the O'Brien county court

was brought for an amount not satisfied by a sale of property in Wisconsin, the proceeds of which sale had been applied on the Wisconsin judgment.

143 6th interrogatory. If you reply yea to the last proceeding question, then state who was employed by the said firm to attend to the said suit last mentioned, giving the name of the attorney and his then place of residence.

Answer. Patrick Robb was the attorney for Gre-ley & Gale in the suit referred to, and I think he lived at Dubuque, Iowa.

7th interrogatory. If in reply to the last proceeding question you say that Patrick Robb was employed by said firm to prosecute said action, then state, if you know, what has become of said Robb.

Answer. Patrick Robb is dead.

8th interrogatory. If in reply to interrogatory 2 you say you are the party who purchased the lands therein mentioned, then state whether or not you afterwards received from the sheriff of said O'Brien county, Iowa, a sheriff's deed to the said lands, the said lands being described as follows: All of section twenty-nine (29), all of section thirty-three (33), and the west fractional half of the southwest quarter and the west half of the southeast quarter of section nineteen (19), and the west half of the southwest quarter of section twenty (20), all the foregoing-described tracts being in township nine'-six (96) north, of range thirty-nine (39) west, of the 5th principal meridian; also the southeast quarter of section twenty (20), in township nine'-seven (97) north, of range forty (40) west, of the 5th P. M.; also the northeast quarter of section thirty (30), in township nine'-six (96) north, of range forty-one (41) west, of the 5th P. M.; also the southeast quarter of section thirty (30), in township ninety-six (96) north, of range forty-one (41) west, of the 5th P. M., and the southeast quarter of section nineteen (19), in the town-

144 ship ninety-six (96) north, of range forty-one (41) west, of the 5th P. M.; and if you answer yea, then state whether or not you have said deed in your possession or under your control; and, if so, produce the same and attach it or a true copy thereof to this deposition, properly identified; and if you have not got such deed, then state what has become of the same, if you know.

Answer. I purchased the lands sold by the sheriff of O'Brien county, Iowa, under an execution against Adolph Wehrman and I received a sheriff's deed for said lands. To the best of my knowledge and belief, your question contains a correct description of said lands, but I cannot state this positively, as my deed and all my papers in relation to those lands are lost and were probably destroyed by fire at the time my store was burned, which was in February, 1881.

9th interrogatory. State, if you know, who has paid the taxes on the said lands described in the preceding interrogatory from the year 1861 up to the date of the sale by you, if such sale you made, of any of said lands.

Answer. I paid the taxes on the said lands through my agents from the year 1861 to the time I sold the same, which *which* sales

were made at different times for different portions of said described lands.

10th interrogatory. State whether or not you paid the taxes on all of said lands above described during the time that you held the title to the same or claimed title thereto.

Answer. I paid the taxes on said lands from the date of the sheriff's deed up to the dates of sales by me. In fact, I paid
145 all taxes levied upon said lands from the date of "entry" by Adolph Wehrman to the date of my sales.

11th interrogatory. State whether or not you have the tax receipts for the taxes paid on said lands or any of them during the time you claimed to own the same; and, if so, attach the same hereto, properly identified; and, if not, state what has become of them.

Answer. I have here the tax receipts, dated January 31st, 1881, for the taxes of 1880, upon all of the said described lands which remained unsold by me up to that year. These are the tax receipts I can find. The others were, I believe, lost or destroyed at the time of the fire at my store above referred to. These three tax receipts I have marked with my initials, and they are also marked Exhibits "A," "B," and "C" respectively, and as such are hereto attached.

12th interrogatory. State whether or not you have claimed to be the owner of said premises since the said sheriff's sale mentioned in interrogatory 2.

Answer. I have claimed ownership of all of the lands referred to ever since I became the purchaser at said she-iff's sale, up to the times I sold them.

13th interrogatory. State whether or not you ever paid any taxes on any of said lands described in interrogatory 8; and, if so, then state how long and on what part of said lands.

Answer. I have stated that I believe the lands as described in interrogatory 8 are the identical lands I purchased at sheriff's sale before referred to, and I paid taxes on all of said lands from the date Adolph Wehrman made the original entries thereof to the times I sold the said lands long after I became their purchaser at said sheriff's sale.

14th interrogatory. Do you know or can you set forth any
146 other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I think of nothing further.

Cross-examination:

1st cross-interrogatory. State where you have resided from the year 1861 up to the present time, inclusive.

Answer. During all of the time referred to I have resided continuously in the city of St. Louis, Missouri.

CHARLES S. GREELEY.

Sworn to and subscribed before me this twenty-seventh day of September, A. D. 1889.
Witness my hand and official seal.
[L. S.] C. D. GREENE, JR.,
Special Commissioner.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Charles D. Greene, Jr., special commissioner, do hereby certify that the above deposition of Carlos S. Greeley was sworn to and subscribed by the said deponent before me and in my presence, and that the said deposition was taken by me on the twenty-seventh day of September, A. D. 1889, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of said day, at the place and for the purpose named in the caption thereof, and that neither party, his agent or attorney, was present at such examination.

Witness my hand and official seal this twenty-seventh
147 day of September, A. D. 1889.
[L. S.] C. D. GREENE, JR.,
Special Commissioner.

[Endorsed:] U. S. circuit court, north. dist. Iowa, west. div. T. B. Conklin *et al. vs.* Fred'k Wehrman. Depositions of Carlos S. Greeley for complainants. 93. Filed Oct. 1st, 1889. A. J. Van Duzee, cl'k, by J. H. Bolton, dep'ty. Fees, $7.00, paid by complainants.

148 And afterwards, to wit, May 6th, 1890, there was filed in the office of the clerk of said court a stipulation of facts in said cause; which said stipulations is in words and figures as follows, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. B. CONKLIN *et al.*
vs.
FREDERICK WEHRMAN. } May Term, 1890. Stipulation.

It is hereby stipulated on behalf of the complainants in the above cause that Patrick Robb, who was attorney for Greeley, Gale & Co. in these two cases in this district court of O'Brien county, Iowa, one by said firm against Adolph Wehrman, and one in equity against Adolph Wehrman, Frederick Wehrman, and Augusta Wehrman, said cases being the ones mentioned in the pleadings in this cause, is now dead and has been for a long time prior to the commencement of the action at law of the defendant in this court against the complainants.

That the foregoing stipulation may be used by complainants as evidence of said fact in the trial of said cause.

It is agreed on behalf of the defendant that the United States

census and the census of the State of Iowa show the population of O'Brien county, Iowa, for the years named to be as follows:

1860, U. S.	census	8
1865, State	"	30
1870, U. S.	"	715
1875, State	"	2,349
1880, U. S.	"	4,155
1885, State	"	8,389

And that this agreement may be used on behalf of defendant in trial of afore cause in place of said census reports.

Dated May 6th, 1890.

E. C. HERRICK,
JOY, HUDSON, CALL & JOY,
149 WARREN WALKER,
Solicitors for Complainants.

CHAS. A. CLARK,
Solicitor for Defendant.

150 [Endorsed:] No. 93. Conklin *et al. vs.* Wehrman. Stipulation of facts. Filed May 6, 1890. A. J. Vanduzee, clerk, J. H. Bolton, deputy.

151 And afterwards, to wit, Dec. 24th, 1889, there was filed in the office of the clerk of said court stipulations and copies of papers used in evidence in said cause; which said stipulations are in words and figures as follows:

152 In the Circuit Court of the United States in and for the Northern District of Iowa, Western Division.

T. B. CONKLIN and E. F. CONKLIN, Complainants,
vs.
FREDERICK WEHRMAN, Defendant.
} Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that J. W. Walter, if present, would swear and testify as follows in the said cause:

That he is the present clerk of the courts of O'Brien county, Iowa, and has been such since the first day of January, 1889; that as such clerk he has the custody and control of all the records belonging to the district court of the State of Iowa in and for the said county of O'Brien; that he has made diligent search for the original files and papers in the case of Greeley, Gale & Co. *vs.* Adolph Wehrman, Augusta Wehrman, and Frederick Wehrman, a suit in equity, and that he has not been able and cannot now find any of the papers or files in said cause; that he has also made diligent search for the original papers in the case of Greeley, Gale & Co. *vs.* Adolph Wehrman in the district court of O'Brien county, Iowa, and has not been able and is not able to find any of the said papers or of the files in the same; that his search has been made for all of

said papers in the places where they would be likely to be in his said office and among the records thereof, and that the said papers are not among the said records, and he does not know where they are and has never seen them since he went into said office.

It is further agreed that this stipulation may be used on the trial of said above cause as the evidence of the said J. W. Walter with the same force and effect as if the said witness had been personally present and had testified to the said matters, the same to be used on the part of the complainants in said cause.

In witness whereof the said parties have hereunto set their hands by their respective attorneys this the 19th day of September, 1889.

W. L. JOY,
WARREN WALKER,
E. C. HERRICK,
Attorneys for the Complainants.
J. W. BULL,
CHAS. A. CLARK,
Attorneys for the Defendant.

153 [Endorsed:] Filed Dec. 24th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

154 CLAY COUNTY *vs.* WOODBURY COUNTY. } 377. Agreed Case.

Now come the said parties and submit this cause to the court upon an agreed state of facts, and after due consideration the court finds that the defendant has collected of funds out of the tax-list of 1858, exclusive of the State tax, the sum of one thousand six hundred and sixty-two dollars, which property belongs to the plaintiff; that out of the same the defendant is entitled to retain for her reasonable expenses in the assessment and collection of said money the sum of two hundred & sixty-two dollars.

It is therefore considered that the plaintiff recover of defendant the sum of fourteen hundred (1,400) dollars and her costs in this behalf, and it is ordered that the treasurer of said defendant make out and deliver to the county judge of said Clay county a true copy of the tax-list of 1858 for said county of Clay which remained uncollected on the 1st day of April, 1860, and it is also ordered that from and after this date the defendant shall be enjoined and restrained from the further collection of said taxes.

I hereby acknowledge full and complete satisfaction and payment of this judgment this 20th day of June, 1860.

CLAY COUNTY, IOWA,
By CHAS. C. SMELTZER,
County Judge.

154½ In the District Court of Woodbury County, April Term, 1860.

CLAY COUNTY
vs.
WOODBURY COUNTY & JOHN P. ALLISON, County Judge Thereof.

The undersigned parties have a question between them in difference which might be the subject of a civil action, and herewith present the same to this court, having jurisdiction of the subject-matter, for its judgment thereupon by an agreed statement of facts, which are as follows:

That by act of the General Assembly approved —— —, 185–, The County of Clay, the petitioner herein, was annexed to Woodbury County, the defendant herein, for election, judicial, and revenue purposes and so remained until the 12th of October, 1858, when an election was held according to law for the complete organization of said Clay county, and all the affairs provided for by law were there elected in and for said county, and the same was duly organized and the officers duly qualified and acting within and for said Clay county on or before the 25th day of said October, 1858.

That in the year 1858 the proper authorities of Woodbury county assessed and levied a tax upon all taxable property in Clay county for State, road, and school purposes amounting in the whole to 12 mills on the dollar, of which 1½ mills were for State tax and the remainder for school, county, and road purposes.

That the tax-list was made out and ready for delivery and in the hands of the clerk of Woodbury county, embracing all taxable lands in said Clay county in said month of October, and then held by the county judge and not delivered to the county treasurer at the time the said county officers of Clay county were elected and qualified and acting, and was in said month of October duly demanded by the county judge of Clay county for the use
155 and benefit of said county of Clay, but was refused by the then county judge of Woodbury county, and the same was, after the first day of November, 1858, delivered to the recorder and treasurer of Woodbury county, with the warrant directing him to collect the same, since which time the treasurer of Woodbury county has been continuously collecting and receiving all of said several kinds of tax as assessed and levied on property within said Clay county and has received therefor the sum of over $1,325, exclusive of the State tax, no part of which has been paid or accounted for by said Clay county or any officer thereof nor expended therein.

That the county officers of Clay county have frequently demanded the same and offered to pay to Woodbury county a reasonable sum for the making up of said tax-list, said Woodbury county delivering over the same and the collections thereon, but the same has been declined at all times. Each county claims the proceeds of said tax levy.

If the county of Woodbury or its officers is entitled to compensa-

tion for its services in the premises it is agreed the value thereof is —.

The above controversy is real, and if the court is of opinion that the proceeds of said assessment and tax belong to Clay county a judgment may be entered by the court prescribing the rule for settlement and ordering a payment of the amount to Clay county and enjoining any further collection of said taxes in Woodbury county or by its officers and ordering a transfer of the tax-list and warrant to Clay county and any other order needful or proper in the premises.

WOODBURY COUNTY, IOWA,
By JNO. P. ALLISON, *Co. Judge.*
CLAY COUNTY, IOWA,
By CHAS. C. SMELTZER,
County Judge.

156 STATE OF IOWA, } ss:
Woodbury County, }

C. C. Smeltzer, county judge of Clay county, on oath declares that the above controversy is real, and that the proceeding is in good faith to determine the rights of the parties thereto.

[Seal of the District Court of Woodbury County, Iowa.]

CHAS. C. SMELTZER,
County Judge.

Subscribed and sworn to before me this 3d April, 1860.
J. N. FIELD, *Clerk.*

157 CLAY COUNTY
vs.
WOODBURY COUNTY. } No. 348.

Agreed case.

Filed April 4, A. D. 1860.

J. N. FIELD, *Clerk.*

I am security for clerk's docket fee.

STATE OF IOWA, } ss:
Woodbury County, }

I, J. H. Bolton, clerk of the district court of Woodbury county, Iowa, do hereby certify that the foregoing is a full, true, and complete copy of the original agreed statement of facts in the case of Clay County, Iowa, *vs.* Woodbury County, Iowa, filed April 4th, 1860, in district court of Woodbury county, Iowa, and a full, true, and correct copy of the judgment and decree in the said cause as the said decree is recorded in Book "A," on page 377, of the said record of said district court of Woodbury county, Iowa, and as fully as the said agreed statement of facts and said records appear of record and on file in my office.

Witness my hand and seal of the district court of Woodbury county, Iowa, this 1st day of Nov., 1887.

[SEAL.] J. H. HOLTON,
Clerk Dist. Court.

Fee, 50 cents, paid by E. C. Herrick.

158 [Endorsed:] Filed Dec. 24th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

159 Page 345.

County Court, Woodbury County, Iowa, August 7th, 1860.

Now comes Charles E. Hedges, treasurer of Woodbury county, Iowa, aforesaid, and makes the following report showing the amount of school and road funds collected on lands in O'Brien county, Iowa, since the organization of said O'Brien Co., on the sixth day of February, A. D. 1860, including said 6th day, to the present time, to wit:

Amount of county tax for 1858		$43 92
"	interest on same	11 96
"	school tax for 1858	18 30
"	interest on same	5 06
"	road tax for 1858	14 64
"	interest on same	4 15
"	county tax for 1859	341 78
"	interest on same	9 59
"	school tax for 1859	57 35
"	interest on same	1 59
		$503 34
Amount of commission for collecting @ 10 %		50 83
		$457 51

Thereupon comes I. C. Fowler, county judge of O'Brien county aforesaid, and claims that in accordance with the decision of the district court of, in, and for Woodbury county aforesaid, at the April term, A. D. 1860, in the case of Clay County, Iowa, *vs.* Woodbury County aforesaid, which was a similar claim, said O'Brien county is entitled to receive said amount of $457.51.

160 Thereupon it is ordered that the sum of four hundred and fifty-seven & $\frac{51}{100}$ dollars be allowed said O'Brien county in full satisfaction of said claim.

JOHN P. ALLISON,
County Judge.

STATE OF IOWA, }
Woodbury County, } *ss:*

I, W. C. Hutchins, the duly elected and legally acting auditor of Woodbury county, Iowa, hereby certify that the foregoing is a full, true, and correct copy of the original records of the county court of

Woodbury county, Iowa, now in my possession, as appears on page 345 of the Minute Book of said county court, so far as the same pertains to the transfer of moneys for taxes from Woodbury county to O'Brien county, Iowa, and as fully as the same appears in the said original records of said county court of Woodbury county now on file and kept in my office.

In witness whereof I have hereunto set my hand and official seal this the first day of Nov., 1881.

[SEAL.]

W. C. HUTCHINS,
Auditor of Woodbury County, Iowa,
By F. L. HUTCHINS, *Deputy.*

161 [Endorsed:] No. 5. Proceedings of county court of Woodbury county, Iowa. Filed Dec. 24th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

162 *Treasurer's Tax Deed to C. C. Orr.*

Know all men by these presents that whereas the following-described real property, viz:

Part of section.	Sec.	Town.	Range.	Acres.
N e of n e	20	94	39	40
N w ¼	20	"	"	160
S ½ of n w	3	96	39	80
S w ¼	3	"	"	160
S ½ of n e ¼	4	"	"	80
E ½ of s w	7	"	"	80
W frc. ½ of s w	7	"	"	62
N e of s e	14			40
W ½ of s e	14	"	"	80
N ½ of n e	17	"	"	80
S e of n e	17	"	"	40
E ½ of n w	18	"	"	80
W frc. ½ of n w	18	"	"	62
E ½ of s w	18	"	"	80
W frc. ½ of s w	18	"	"	61
W frc. ½ of s w	19	"	"	61
W ½ of s e	19	"	"	80
W ½ of s w	20	"	"	80
W ½ of n e	21	"	"	80
N w	21	"	"	160
S e	21	"	"	160
E ½ of s e	23	"	"	80
All of sec	29	"	"	640
N e	32	"	"	160
N w	32	"	"	160
S w	32	"	"	160

Treasurer's Tax Deed to C. C. Orr—Continued.

	Part of section.	Sec.	Town.	Range.	Acres.
	S e	32	96	39	160
163	All of sec	33	96	39	640
	E ½	34	96	39	320
	N w	35	"	"	160
	S ½ of n w	36	"	"	80
	S w	36	"	"	160
	N ½ of n w	2	96	41	80
	N e	3	"	"	160
	S e of n w	3	"	"	40
	W ½ of n w	3	"	"	80
	S e	4	"	"	160
	W ½ n w	7	"	"	70
	W ½ of s w	7	"	"	67
	S e of n e	10	"	"	40
	N ½ of s w	10	"	"	80
	N e of s w	10	97	41	40
	W ½ s w	10	"	"	80
	N e	13	"	"	160
	N w	13	"	"	160
	S e	13	"	"	160
	N e of n w	17	"	"	40
	S ½ of n w	17	"	"	80
	N e	18	"	"	160
	N e	21	"	"	160
	S w of s w	10	96	41	40
	E ½ of s e	10	"	"	80
	S w	11	"	"	160
	S ½ of s e	12	"	"	80
	N w	14	"	"	160
	S w	14	"	"	160
	S w	15	"	"	160
	S w n e	17	"	"	40
	N w	17	"	"	160
	W ½ s e of s w	17	"	"	120
	S e	19	"	"	160
	S e	22	"	"	160
	N w	23	"	"	160
	N w s e	"	"	"	40
	S w	25	"	"	160
	S e ¼	"	"	"	160
	N w ¼	28	"	"	160
	S w ¼	29	"	"	160
	N e ¼	30	"	"	160
	S e	"	"	"	160
	W frc. ½ of n w	31	"	"	60

Treasurer's Tax Deed to C. C. Orr—Continued.

Part of section.	Sec.	Town.	Range.	Acres.
W frc. ½ of s w	31	96	41	67
N w ¼	34	"	"	160
S w of n w	36	"	"	40
N frc. ½ of n e	1	97	39	60
N frc. ½ n w	"	"	"	60
S w n e	4	"	"	40
S e n e	4	97	39	40
N e of n e	10	97	39	40
N e	11	"	"	160
N ½ s e	"	"	"	80
S e of s e	"	"	"	40
N e n e	12	"	"	40
S w ¼	"	"	"	160
N e ¼	13	"	"	160
N w ¼	"	"	"	160
W frc. ½ s w	19	"	"	64
E ½ of s e	"	"	"	80
N w	20	"	"	160
W ½ s w	"	"	"	80
E ½ of s e	21	"	"	80
N e	23	97	41	160
S w	24	"	"	160
N w	25	"	"	160
S e	25	"	"	160
S ½	26	"	"	320
W ½ n e	28	"	"	80
E ½ n w	31	"	"	80
E ½ s w	31	"	"	80
N e of n e	32	"	"	40
W ½ s w	22	97	39	80
All section	23	"	"	640
N w ¼	30	"	"	160
W ½ s w	"	"	"	80
W frc. ½ n w	31	"	"	65
S w ¼	35	"	"	160
W ½ n w	36	"	"	80
S w ¼	3	97	40	160
S w of n w	4	"	"	40
S e of n w	"	"	"	40
W ½ n e	5	"	"	80
S e of n e	"	"	"	40
N ½ n w	"	"	"	80
S e s w	"	"	"	40
N ½ n e	6	"	"	80
N ½ n w	"	"	"	80

Treasurer's Tax Deed to C. C. Orr—Continued.

Part of section.	Sec.	Town.	Range.	Acres.
S w n w	6	97	40	40
N w s w	6	"	"	40
N ½ s e	6	"	"	80
N e ¼ n e	9	"	"	40
N ½ n e	12	"	"	80
N e ¼ n w				
N ½ n w	12	"	"	80
S w ¼ n w	12	"	"	40
N w ¼ s w	12	"	"	40
S w ¼ s w	12	"	"	40
N w	13	"	"	160
N e ¼ n w	17	"	"	40
S e	17	97	40	160
S ½ n e	20	"	"	80
S e	20	"	"	160
S e s w	24	"	"	40
S ½ s e	24	"	"	80
N e	25	"	"	160
N e	27	"	"	160
N w	27	"	"	160
E ½ s w	30	"	"	80
S e	30	"	"	160
N ½ n e	1	97	41	80
W ½ s e	1	"	"	80
N w of n e	3	"	"	40
N ½ n w	3	"	"	80
W ½ n e	32	97	41	80
N w	32	"	"	160
N ½ s w	32	"	"	80
S e of s w	32	"	"	40
N w of s e	32	"	"	40
S ½ s e	32	"	"	80
W ½ s w	33	"	"	80
S e of s e	35	"	"	40

situated in the county of O'Brien and State of Iowa, was subject to taxation for the year- A. D. 1858 & 1859; and whereas the taxes assessed upon said real property for the years aforesaid remained due and unpaid at the date of the sale hereinafter named; and whereas the treasurer of said county did on the 22nd day of December,
164 1860, by virtue of the authority in him vested by law, at an adjourned sale begun and publicly held on the first Monday of October, A. D. 1860, expose to public sale at the court-house, in O'Brien *in the* county aforesaid, in substantial conformity with all the

requisitions of the statutes in such cases made and provided, the real property above described for the payment of the taxes, interest, and costs then due and remaining unpaid on said property; and whereas at the time and place aforesaid Chas. C. Orr, of the county of Woodbury and State of Iowa, having offered to pay the sum of fourteen hundred and forty-eight dollars sixty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property for the whole of each of said tracts of land, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property
165 was stricken off to him at that price; and whereas three years *has* elapsed since the date of said sale and the said property has not been redeemed therefrom as provided for by law:

Now, therefore, I, A. Murray, treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid as aforesaid and by virtue of the statute in such cases made and provided, hav*ing* granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Chas. C. Orr, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said Chas. C. Orr, his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

In witness whereof I, A. Murray, treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this 28th day of June, A. D. 1866.

A. MURRAY, *Treasurer.*

166 STATE OF IOWA, } ss:
O'Brien County, }

I hereby certify that before me, John More, dist. clerk in and for said county, personally appeared the above-named John Murray, treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to *the same to* be his voluntary act and deed as treasurer of said county for the purposes therein expressed.

Given under my hand and seal this 28th day of June, A. D. 1866.

[CLERK'S SEAL.] JOHN MOORE, *Dist. Clerk.*

Filed the 7th day of July, A. D. 1866.

A. MURRAY, *Recorder.*

Irvine case. Def't's Ex. A'. Def't's Ex. C. Bundiet case.
[Endorsed:] Copy of tax deed. O'Brien Co., Ia. Filed Dec. 24th, 1890. A. J. Van Duzee, cl'k. J. H. Bolton, d'p'ty.

167 STATE OF IOWA, } ss:
County of O'Brien, }

I, W. H. Hayes, recorder of the county of O'Brien and State of Iowa, do hereby certify that the above and foregoing is a full, com-

plete, true, and correct copy of a treasurer's tax deed as taken from the records in my office, and that the said treasurer's deed of which this is a copy is recorded in Book "B" of Deeds, at pages, 147, '48, & '49, as the same now remains of record in my office, and that I am by law the keeper of the records from which said copy is taken.

Witness my hand this 19 day of March, 1886.

W. H. HAYES,
Recorder of O'Brien County, State of Iowa.

No seal by statute required.

168 Ex. K.

D, 367.

Sheriff's Deed.

State of Iowa, District Court, Woodbury County.

GREELEY, GALE & Co.
vs.
ADOLPH WEHRMAN.

By virtue of a writ of execution issued out of the district court of Woodbury county, State of Iowa, by the clerk of said court tested the 16th day of June A. D. 1862, to me described and delivered in a certain cause, wherein Greeley, Gale & Co. were plaintiffs and Adolph Wehrman was defendant, against the goods and chattels, lands and tenements of the said Adolph Wehman for the want of sufficient personal property wherewith to satisfy the amount and costs I did seize and levy upon, on the 23d day of June A. D. 1862 on all the estate, right, title and interest which the said Adolph Wehrman had on the 23d day of June A. D. 1862 or at any time afterwards or now has in and to the following-described property, to wit:—

All of section twenty-nine (29), all of section thirty-three (33) and the west fractional half of the southwest quarter and the west half of the southe-st quarter of section nineteen (19) and the west half of the southwest quarter of section twenty (20), all the foregoing-described tracts being in township ninety-six (96) north of range thirty-nine (39) west of the 5th principal meridian.

Also the southeast quarter of section twenty (20) in township ninety-seven (97) north of range forty (40) west of the 5th P. M. Also the northeast quarter of section thirty (30) in township ninety-six (96) north of range forty-one (41) west of the 5th P. M.

Also the southeast quarter of section thirty (30) in township ninety-six (96) north of range forty-one (41) west of the 5th P. M.. and the southeast quarter of section — (19) in township ninety-six (96) north of range — (41) west of the 5th P. M., and having
169 advertised the said property for sale for four weeks immediately preceeding the day of sale hereafter mentioned by

notice of same posted in three public places in said county of O'Brien, one of which places being in the same township in which said property is situated and one being on the front door of the building in which the last district court of said O'Brien county was held as required by law, there being no newspaper published in said county of O'Brien.

Did on the 31st day of July A. D. 1862, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of that day, proceed to sell the said property after having first exposed the same for sale at public auction at the door of the building aforesaid in separate parcels and offered the said property for sale in a body, and Carlos S. Greeley of St. Louis, Missouri, having bid therefor the sum of one thousand nine hundred and thirty and $\frac{59}{100}$ dollars, did then and there strike off the said property to the said Carlos S. Greeley, he being the highest bidder and said sum of one thousand nine hundred and thirty & $\frac{59}{100}$ dollars being the highest and best sum bid therefor.

And I certify that said sale was in all things fairly and honestly conducted without any fraud or deceit whatever.

Now therefore know ye that I, A. Murray the sheriff of the county of O'Brien, State of Iowa, by virtue of the said writ of execution and of the statutes in such case made and provided in consideration of the said sum of one thousand nine hundred and thirty & $\frac{59}{100}$ dollars ($1,930.59) to me in hand paid by the said Carlos S. Greeley, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Carlos S. Greeley, his heirs and assigns forever, all the estate, right, title and interest which the said Adolph Wehrman has on the 23d day of
170 June A. D. 1862 or at any time afterwards or now has in and to all of the above-mentioned property, to have and to hold forever as fully and absolutely as I the said A. Murray, sheriff aforesaid and under the authority aforesaid, might, could or ought to sell and convey the same.

In witness whereof I have hereunto set my hand this 31st day of December A. D. 1864.

A. MURRAY,
Sheriff of O'Brien County, Iowa.

[A. M., Dec. 31st, 1864. U. S. revenue stamp. 2 dollars.]

STATE OF IOWA, } ss:
Cherokee County, }

On this 31st day of December, A. D. 1864, before me, clerk of the district court of O'Brien county, Iowa, personally came A. Murray, to me personally known to be the identical person who executed the *the* above sheriff's deed as grantor and to me personally known to be the sheriff of O'Brien county, Iowa, and acknowledged that he executed the same as his voluntary act and deed as sheriff aforesaid and for the acts and purpose therein contained.

Witness my hand and seal, hereunto affixed, this 31st day of December, A. D. 1864.

H. C. TIFFEY,
Clerk of District Court of O'Brien County.

[Five-cent stamp. H. C. T. Dec. 31, 1864.]

Filed for record Oct. 12th, 1870.

171 STATE OF IOWA, }
O'Brien County. }

I, Isaac Clements, recorder of aforesaid county, do hereby certify that I have carefully compared the foregoing deed with the original deed now of record in my office, said deed being recorded in Book "D" of Deeds, page 367, and that the same is a true and correct copy and of the whole thereof.

Dated at Primghar, Iowa, Oct. 26, 1888.

ISAAC CLEMENTS, *Recorder.*

172 [Endorsed:] Filed Dec. 24th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

173 Ex. J.

A, 510.

Sheriff's Deed to Carlos S. Greeley.

State of Iowa, District Court, Woodbury County.

GREELEY, GALE & Co. }
vs.
FREDERICK WEHRMAN. }

GREELEY, GALE & Co. }
vs.
A. WEHRMAN. }

By virtue of a writ of execution issued out of the district court of Woodbury county, State of Iowa by the clerk of said court tested the 16th day of June, A. D. 1862 to me directed and delivered in a certain cause wherein Greeley, Gale & Co., were plaintiffs and Adolph Wehrman was defendant against the goods and chattels, lands and tenements of the said Adolph Wehrman for want of sufficient personal property wherewith to satisfy the amount and cost, I did seize and levy upon on the 23d day of June, A. D. 1862 *on* all the estate, right, title and interest which the said Adolph Wehrman had on the 23d day of June A. D. 1862 or at any time afterwards or now, — his deed to the following-described property, to wit:

All of section twenty-nine (29), all of section thirty-three (33) and the west fractional half of the southwest quarter and the west half of the southeast quarter of section nineteen (19) and the west half

of the southwest quarter of section twenty (20) all the foregoing described tracts being in township ninety-six (96) north of range thirty-nine (39) west of the 5th principal meridian.

Also the southeast quarter of section twenty (20) in township ninety-seven (97) north of range forty (40) west of the 5th P. M.; also the northeast quarter of section thirty (30) in township ninety-six (96) north of range forty-one (41) west of the 5th P. M., and the southeast quarter of section nineteen (19) in township ninety-six (96) north of range forty-one (41) west of the 5th P. M.,
174 and after having advertised the said property for sale for four weeks immediately proceeding the day of sale hereinafter mentioned by notices of the same posted in three public places in said county of O'Brien, on- of which places being in the same township in which said property iss situated and one being on the front door of the building in which the last district court of said O'Brien county was held as required by law, there being no newspaper published in said county of O'Brien, did on the 31st day of July, A. D. 1862, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of that day proceed to sell the said property after having first exposed the same for sale at public auction at the door of the building aforesaid in separate parcels, and there being no bid for said property in parcels offered the said property for sale in a body, and Carlos S. Greeley, of St. Louis, Missouri, having bid therefor the sum of one thousand nine hundred and thirty and $\frac{59}{100}$ dollars did there and then strike off the said property to the said Carlos S. Greeley, he being the highest bidder, and said sum of one thousand nine hundred and thirty & $\frac{59}{100}$ dollars, being the highest and best sure bid therefor.

And I certify that said sale was in all things fairly and honestly conducted without any fraud or deceit whatever.

Now, therefore, know ye that I, A. Murray, the sheriff of the county of O'Brien, State of Iowa, by virtue of the said writ of execution and of the statutes in such case made and provided on consideration of the said sum of one thousand nine hundred and thirty & $\frac{59}{100}$ — ($1,930.59) to me in hand paid by the said Carlos S. Greeley, have granted, bargained, and sold and conveyed, and by these presents do grant, bargain, sell, and convey unto the said Carlos
174½ S. Greeley, his heirs and assigns forever, all the estate, right, title, and interest which the said Adolph Wehrman had on the 23d day of June, A. D. 1862, or at any time afterwards or now has in and to all the above-mentioned property to have and to hold forever as fully and absolutely as I the said A. Murray, sheriff aforesaid and under the authority aforesaid, might, could or ought, to sell and convey the same.

In witness whereof I have hereunto set my hand this 31st day of December, A. D. 1864.

[Revenue stamp, $2.00.]

A. MURRAY,
Sheriff of O'Brien County, Iowa.

STATE OF IOWA, } ss:
O'Brien County, }

On this 31st day of December, A. D. 1864, before me, clerk of the district court od O'Brien county, Iowa, personally came A. Murray, to me personally known to be the identical person who executed the above sheriff deed as grantor and to me personally known to be the sheriff of O'Brien county, Iowa, and acknowledged that he executed the same as his voluntary act and deed as sheriff aforesaid and for the acts and purposes therein contained.

Witness my hand and seal hereunto affixed this 31st day of December, A. D. 1864.

[SEAL.] [R. S.]

H. C. TIFFEY,
Clerk of District Court of O'Brien County.

Filed for record Jan'y 28th, 1865.

A. MURRAY.

174½ STATE OF IOWA, } ss:
O'Brien County, }

I, Isaac Clements, recorder of aforesaid county, do hereby certify that I have carefully compared the foregoing deed with the original deed now of record in my office, said deed being recorded in Book "A" of Deeds, page 510, O'Brien county, Iowa, records, and that the same is a true and correct copy and of the whole thereof.

Dated at Primghar, Iowa, Oct. 26, 1888.

ISAAC CLEMENTS, *Recorder.*

[Endorsed:] Filed Dec. 24th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

175 STATE OF WISCONSIN, } ss:
County of Pierce, }

I, Sylvester Cook, clerk of the circuit court of the State of Wisconsin in and for the county of Pierce, the same being a court of record and having a seal, do hereby certify that the annexed transcript of the execution docket of the said circuit court so far as the same pertains to the case of Carlos S. Greeley, Daniel B. Gale, and Cyrus B. Burnham against Adolph Wehrman and Agust Wehrman is a full, true, and correct copy of the said execution docket now of record in said circuit court and kept in my office among its said records as fully as the same now remains of record in my said office.

And I further certify that I have made due and diligent search among the records of said circuit court in my said office for the original writ of execution issued in the said case above mentioned and referred to in said execution docket, and that the said original writ of execution cannot now be found among the records of my said office, and that I am unable to find the same.

I further certify that the said execution docket is a regu-
176 lar record of the said circuit court and the same is duly authorized and required to be kept by the laws of the State of Wisconsin as a part of the records of said office.

In witness whereof I have hereunto set my hand and affixed the seal of the said circuit court of Wisconsin in and for the county of Pierce, at Ellsworth, in said county, this the 22nd day of August, 1889.

[SEAL.] SYLVESTER COOKE,
Clerk of the Circuit Court of Pierce Co., Wis.

STATE OF WISCONSIN, } ss:
County of Pierce, }

I, Egbert B. Bumby, presiding judge of the circuit court in and for said county of Pierce and State of Wisconsin, the same being a court of record and having a seal, do hereby certify that Sylvester Cook, whose name and signature are attached to the foregoing certificate, was at the time of signing the same the clerk of said circuit court of Wisconsin in and for the county of Pierce, and that he is now such clerk and his signature to said certificate is genuine and his said attestation in due form of law.

In testimony whereof I have hereunto set my hand at —, in the county of —, in said State, this the 24th day of August, 1889.

E. B. BUMBY,
Judge of the 8th Jud. Dist. of Wisconsin.

177 *Execution Docket.*

Date of issue.	Kind of writ.	Parties.	Against whom judgment was rendered.	Am't of judgment.		Interest due at issuing of writ.		Costs.		To what officer issued.	To whom delivered.	Officer's return of writ.	When returned.
				Dollars.	*Cents.*	*Dollars.*	*Cents.*	*Dol.*	*Cents.*				
1861. March 18th	Execution	Greeley, Gale and Burnham, pl'ffs; Wehrman and Wehrman, def'ts.	Defendants	1,640	33	59	32	6	75	Sheriff	Sheriff	Execution returned M'ch 29, 1861, and reports no property found.	M'ch 29th, 1861.

178 [Endorsed:] Filed Dec. 24, 1889. A. J. Van Duzee, cl'k, by J. H. Bolton, d'p'ty.

179 $—. No. 175.

Date of redemption, Oct. 25th, 1883.
By whom redeemed: B. S. West.

Description.	Sec. or lot.	Twp. or block.	Rng.	Acres.
S. E. ¼	30	96	41	160

Sold October 2d, 1883.
Purchased by Thos. J. Patton.

Principal	36	21
Twenty per cent	3	63
Interest	4	31
Tax paid by purchaser for 18—		
Penalty		
Interest		
Tax paid by purchaser for 18—		
Penalty		
Interest		
Tax paid by purchaser for 18—		
Penalty		
Interest		35
Auditor's certificate		25
Total	44	75

Received $44.50 from auditor Oct. 26th, 1883.

THOS. J. PATTON,
By GEO. W. SCHEE.

180 $—. No. 176.

Date of redemption, Oct. 25, 1883.
By whom redeemed: B. S. West.

Description.	Sec. or lot.	Twp. or block.	Rng.	Acres.
N. E. ¼	30	96	41	160

Sold October 25th, 1883.
Purchased by O. P. Miller.

Principal	36 21
Twenty per cent.	3 63
Interest	4 31
Tax paid by purchaser for 18—	
Penalty	
Interest	
Tax paid by purchaser for 18—	
Penalty	
Interest	
Tax paid by purchaser for 18—	
Penalty	
Interest	35
Auditor's certificate	25
Total	44 75

Received $44.50 from auditor October 25, 1883. Sent draft to O. P. Miller. See also 107.

J. L. E. PECK.

181 $9.01. No. 298.

Date of redemption, July 10th, 1886.
By whom redeemed: L. C. Green.

Description.	Sec. or lot.	Twp. or block.	Rng.	Acres.
N. W. ¼ S. W. ¼.	29	96	39	40

Sold Dec. 7th, 1885.
Purchased by Frank A. Turner.

Principal	7 51
Ten per cent	75
Interest	50
Tax paid by purchaser for 188–	
Penalty	
Interest	
Tax paid by purchaser for 188–	
Penalty	
Interest	
Tax paid *for* purchaser for 188–	
Penalty	
Interest	
Cash	
Auditor's certificate	25
Total	9 01

Received $8.76 of auditor Dec. 21st, 1886. (29–96–39.) # 298.

A. M. BOWDLE.

182 $9.01. No. 299.

Date of redemption, July 10th, 1886.
By whom redeemed: L. C. Green.

Description.	Sec. or lot.	Twp. or block.	Rng.	Acres.
N. E. ¼ S. W. ¼	29	96	39	40

Sold Dec. 7th, 1885.
Purchased by Harker & Greene.

Principal	7 51
Ten per cent	75
Interest	50
Tax paid by purchaser for 188–	
Penalty	
Interest	
Tax paid by purchaser for 188–	
Penalty	
Interest	
Tax paid by purchaser for 188–	
Penalty	
Interest	
Auditor's certificate	25
Total	9 01

Received $8.76 from auditor Dec. 10, 1888.

J. L. GREENE,
By S. & CO., *Ag'ts.*

183 $18.02. No. 300.

Date of redemption, July 10th, 1886.
By whom redeemed: L. C. Green.

Description.	Sec. or lot.	Twp. or block.	Rng.	Acres.
S. ½ S. W. ¼	29	96	39	80

Sold Dec. 7th, 1885.
Purchased by J. M. Long.

Principal	15 02
Ten per cent	1 50
Interest	1 00
Tax paid by purchaser for 188–	
Penalty	
Interest	
Tax paid by purchaser for 188–	
Penalty	
Interest	
Tax paid by purchaser for 188–	
Penalty	
Interest	
Cost	
Auditor's certificate	50
Total	18 02

Received $17.77 from auditor Sept. 30, 1886.

J. M. LONG,
By GEO. W. SCHEE.

184 STATE OF IOWA, }
O'Brien County, } ss:

I, C. H. Winterble, auditor of O'Brien county, Iowa, do hereby certify that, as auditor of said county, I have now in my possession the records appertaining to said office, and further certify that the annexed copies of redemption certificate stubs Nos. 175, 176, 298, 299, and 300 are true and correct copies of said redemption stubs, as shown by *sed* red. stub book now on file in my office and a part of the records of said office.

Witness my hand and seal of said county this 6th day of May, 1889.

C. H. WINTERBLE,
[SEAL.] *County Auditor of O'Brien County, Iowa.*

185 [Endorsed:] Certified copies of redemption certificates. Filed Dec. 24th, 1889. A. J. Van Duzee, cl'k. J. H. Bolton, d'p'ty.

186 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. S. CONKLIN *et al.*
vs.
ADOLPH WEHRMAN. } In Equity.

Stipulation of Facts.

It is hereby stipulated and agreed, by and between the parties to this action, that the statement of F. N. Derby, treasurer of O'Brien county, Iowa, hereto attached, marked Exhibit "A" and made a part of this agreement, correctly shows in whose name and names

the lands therein described were assessed for taxation and by whom the taxes upon said lands for the respective years therein set out were paid and the amounts of taxes so paid on the said lands for said several years, as the same appears by the records of O'Brien county, Iowa; and the said statement may be used as competent evidence of the facts therein stated upon the trial of this cause.

It is further stipulated and agreed that the parties to whom said lands were taxed during said time and by whom the said taxes were paid, as shown by said statement, were the grantees of
187 Carlos S. Greeley and the grantees of those claiming under him; that the deed records of said O'Brien county disclose said respective conveyances and that said conveyances were recorded at or about the time they were made, and that said conveyances were in nearly all cases warrantee deeds; that said lands were, except where no names appear in said statement, assessed for taxation and taxed in the name and names of the parties whom the records of O'Brien county disclosed to be the owners of the said Carlos S. Greeley claim of title.

It is further agreed that this stipulation may be treated and used as competent evidence of the facts herein stated, subject to objection as to the relevancy or materiality of the facts agreed on.

Dated Nov. 6th, 1889.

188 EXHIBIT "A."

Statement of Tax Records Covering all the Lands from 1861 *to* 1879 (*Inclusive*).

	Year.		Taxed in name of—	Tax paid by—	
		W. ½ S. W. ¼, 19, 96, 39..	C. C. Orr. Paid.....	Greeley, Gale & Co.	
*	1861	Fred. Wehrman.....	Greeley, Gale & Co....	Greeley, Gale & Co..	R. 102.78
	1862	"	Greeley & Gale.....	"	* 105.70
	1863	"	Greeley, Gale & Co....	"	* 72.04
Sheriff's deed, Dec. 31, 1864.	1864	"	Greeley & Gale.....	"	* 85.80
		Claimants under Greeley title.			
	1865	Carlos S. Greeley.....	Mess. Greeley & Gale..	Carlos S. Greeley ...	* 93.09
Tax deed.				...	
*	1866	"	C. S. Greeley	" ...	* 104.86
	1867	"	"	" ...	* 104.86
	1868	"	"	" ...	R. 195.27
	1869	"	"	" ...	* 160.66
	1870	"	"	" ...	R. 227.30
			(W. ½ S. W. ¼ 19-96-39 Patrick Reilly.	(Patrick Reilley).....	R.
					* p.
*	1871	"	"	"	vo. 458.00
	1872	"	"	"	R. 316.10
	1873	"	"	"	R. 663.58
	1874	"	"	"	* 436.86
	1875	"	"	"	R. 528.61
	1876	"	"	"	R. 680.62
	1877	"	"	"	R. 509.86
	1878	"	"	"	R. 509.86
	1879	"	"	"	R. 389.06
		All the land except N. ½ N. E. ¼ 29, 96, 39.			
	1880	C. S. Greeley.....	C. S. Greeley	C. S. Greeley	R. 606.92
	1880		N. ½ N. E. ¼ 29, 96, 39.		
		S. P. Miller, 6, 3, 1880..	S. P. Miller.....	S. P. Miller.....	15.12
				Paid May 14, 1881. Rect 121.	6,400.94

189 1881 *to* 1887, *Inclusive.*

W. ½ S. E. ¼ 19, 96, 39.

Year.	Grantees under Greeley title.	Taxed to—	Paid by—	When paid.	No. of receipt.	
1881	Carlos S. Greeley..	Carlos S. Greeley..	C. S. Greeley.....	2, 2, '82	315	14.20
1882	O. M. Shonkwiler.	O. M. Shonkwiler..	O. M. Shonkwiler.....	9, 21, '83	2047	17.24
1883	" "	J. S. Finster.....	J. S. Finster.....	10, 4, '84	2619	15.86
1884	J. S. Finster.....	(No name.).....	M. M. Crookshank	3, 28, '85	1710	14.72
				3, 25, '86	713	6.70
1885	M. M. Crookshank	" "	M. M. Crookshank	9, 24, '86	2627	5.12
1886	" "	" "	" "	4, 30, '87	2202	15.48
1887	" "	M. M. Crookshank	(Not paid)			
1888	R. P. Owens.....					

N. W. ¼ of S. W. ¼ 19, 96, 39.

1881	Carlos S. Greeley..	Carlos S. Greeley..	Carlos S. Greeley.....	2, 2, '82	315	5.50
1882	Lillian Worley.....	J. D. Edmundston	Sold to J. D. Edmundson Oct. 1st, 1883; not redeemed.			
1883	" "	" "	J. D. Edmundson	3, 15, '84	1470	6.49
1884	Geo. W. Schee.....	(No name.).....	" "	4, 9, '85	1567	6 82
			Jedediah Shinkle.....	3, 10, '86	577	2.72
1885	Jedediah Shinkle	" "	Jno. McCollom.....	10, 6, '86	3260	1.95
1886	Jno. McCollum.....	" "	Sold; redeemed by Peter McCollum.	4, 11, '88	.....	7.96
1887	Jno. McCollum.. ..	Jno. McCullom.....	Peter McCollum.....	4, 11, '88	1706	7.67
1888	Peter McCullom...					

S. W. ¼ of S. W. ¼ 19, 96, 39.

1881	Carlos S. Greeley..	Carlos S. Greeley..	C. S. Greeley.....	2, 2, '82	315	5.50
1882	Lillian Worley.....	(No name).....	Peter McCollum	4, 11, '88	3750	17.65
1883	" "	" "	Sold to J. M. Long 10, 6, '84; redeemed by Peter McCollum.	3, 27, '89	.....	10.58
1884	Geo. W. Schee.....	" "	Sold to Geo. W. Schee 12, 7, '85; redeemed by Peter McCollum.	3, 10, '86	577	5.73
1885	Jedidiah Shinkle..	" "	Jedidiah Shinkles.....	11, 6, '86	3260	1.95
1886	Jno. McCollum.....	" "	John McCullom; sold Dec. 5, 1887; red. by Peter McCullom.	4, 11, '88		
1887	Peter McCollum..	John McCollum...	Peter McCollum	4, 11, '88	1706	7.67

W. ½ of S. W. ¼ 20, 96, 39.

1881	A. G. Conklin.....	J. C. Failey.....	J. C. Failey.....	6, 30, '82	1744	15.40
1882	A. G. Conklin	" "	" "	7, 30, '83	1922	11.05
1883	" "	A. G. Conklin.....	" "	8, 30, '84	2456	13.44
1884	" "	J. C. Failey..	" "	9, 30, '85	2643	5.89
1885	" "	No name	Patch & Co.....	2, 24, '86	412	9.05
1886	G. A. Colby.....	A. G. Conklin.....	M. E. Colby	3, 29, '87	1875	8.46
			" "	9, 30, '87	3349	7.04
1887	Mary E. Colby, 1 k'n.	Patch & Colby.....	" "	3, 21, '88	1365	9.31
1888	Frank Patch & Mary E. Colby.	.....	Frank Patch.....	8, 22, '88	2586	8.50
						273.65

190 N. ½ N. E. ¼ 29, 96, 39.

1881	S. P. Miller.....	Thos. J. Patton.....	Sold to Thos. J. Patton, 10, 2, '82; red. by S. P. Miller.	10, 3, '83	.....	19.86
1882	" "	S. P. Miller..	S. P. Miller.....	8, 28, '83	1972	16.59
1883	" "	" "	S. P. Miller.....	9, 29, '84	2535	13.45
1884	" "	No name.....	Dr. L. F. Searls.....	2, 26, '85	877	13.12
1885	Harriet Searls.....	" "	Dr. Searls	3, 24, '86	1232	11.80
1886	" "	S. P. Miller.....	Dr. H. E. Searls	4, 12, '87	1568	15.68
1887	" "	L. F. Searls.....	L. F. Searls.....	1, 10, '88	16	17.01
1888	Thos. Cousins.....					

S. ½ of N. E. ¼ 29, 96, 39.

1881	H. H. Turner.....	H. H. Turner.....	H. H. Turner.....	2, 21, '82	614	14.40
1882	" "	" "	" "	4, 23, '83	1444	15.24
1883	O. P. Jones.....	O. P. Jones.....	O. P. Jones.....	2, 26, '84	856	13.44
1884	" "	No name.....	" "	9, 21, '85	2408	14.72
			O. P. Jones.....	3, 31, '86	1576	6.43
1885	" "	No name.....	" "	8, 14, '86	2169	5.10
			" "	3, 3, '87	482	8.46
1886	" "	" "	Thos. Cousins.....	9, 22, '87	2734	6.87
1887	Thos. Cousins.....	O. S. Cousins	" "	3, 28, '88	1489	15.30
1888	" "					

1881 *to* 1887, *Inclusive*—Continued.

N. W. ¼ 29, 96, 39.

Year.	Grantees under Greeley title.	Taxed to—	Paid by—	When paid.	No. of receipt.	
1881	Frank A. Turner..	Frank A. Turner..	Frank A. Turner.....	1, 21, '82	159 R.	23.80
1882	John Medland.....	John Medland.....	John Medland	2, 23, '83	544 R.	30.88
1883	W. S. Medland.....	W. S. Medland.....	W. S. Medland	2, 15, '84	521 R.	26.88
			" "	3, 22, '85	1892	20.70
1884	" "	No name.....	" "	9, 28, '85	2554	13.12
			" "	3, 25, '86	1283	11.68
1885	" "	W. S. Medland.....	" "	10, 9, '86	3022	10.30
1886	" "	W. S. Medland.....	" "	4, 30, '87	2208	23.82
1887	" "	" "	" "	6, 19, '88	2451	25.79
1888	" "					
						399.54

191 N. ¼ S. W. ¼ 29, 96, 39.

1881	H. J. Cookingham	Chas. Cookingham	Chas. Cookingham.....	4, 29, '82	1510 R.	14.69
1882	C. O. Cookingham	" "	" "	3, 16, '83	1099 R.	15.20
1883	" "	C "	C "	8, 30, '84	2405 R.	13.94
1884	" "	No name.....	Sold Dec. 7, '85; red. by L. C. Green.	7, 10, '86		
1885	" "	C. Cookingham.....	H. T. Cookingham	4, 13, '86	1770 R.	12.64
				3, 31, '87	1451	8.46
1886	L. C. Green.....	C. O. Cookingham	L. C. Green.....	9, 27, '87	3222	6.87
				11, 17, '88	3981	8.78
1887	Henry Henke.....	Henry Henke.....	Henry Henke.....	3, 31, '88	2136	10.50

S. ½ of S. W. ¼ 29, 96, 39.

1881	M. Blenkerson.....	M. Blenkerson.....	M. Blenkerson.....	2, 28, '82	1057 R.	14.40
1882	H. J. Cookingham	" "	" "	2, 8, '83	281 R.	15.04
1883	" "	H. J. Cookingham	H. J. Cookingham.....	6, 14, '84	2165 R.	12.44
1884	" "	No name.....	Sold Dec. 7, 1885; red. by L. C. Green.	7, 10, '86	.....	18.02
1885	" "	H. J. Cookingham	H. J. Cookingham.....	4, 13, '86	1770 R.	12.64
				3, 31, '87	1451 R.	8.45
1886	L. C. Green.....	" "	L. C. Green.....	9, 27, '87	3222 R.	6.86
				3, 31, '88	2136 R.	10.51
1887	Henry Henke.....	Henry Henke.....	Henry Henke.....	11, 17, '88	3981 R.	8.77

S. E. ¼ 29, 96, 39.

1881	H. H. Turner.....	H. H. Turner.....	H. H. Turner	2, 21, '82	614	28.80
1882	" "	" "	" "	4, 23, '83	1444	30.68
1883	O. P. Jones.....	O. P. Jones.....	O. P. Jones.....	2, 26, '84	856	26.88
1884	" "	No name.....	" "	9, 21, '85	2408	29.44
				3, 31, '86	1576	12.86
1885	" "	" "	" "	8, 14, '86	2160	10.30
			" "	3, 3, '87	482	16.92
1886	" "	" "	Thos. Cousins.....	9, 22, '87	2734	13.72
1887	Thos. Cousins.....	Thos. Cousins.....	" "	3, 28, '88	1489	30.60
						397.61

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1881	Carlos S. Greeley..	M. S. Ayars..	M. S. Ayars.....	2, 28, '82	897	7.20
1882	W. G. Sandercock	W. Sandercock.....	W. Sandercock.....	2, 19, '83	435	7.90
1883	" "	" "	" "	10, 21, '84	2660	6.82
1884	" "	No name	" "	4, 9, '86	1566	6.62
1885	L. G. Lackey.....	W. Sandercock....	Sold 12, 6, 1886; red by V. A. Wheelock.	1, 26, '87	.....	7.73
1886	V. A. Wheelock...	No name	Sold 12, 5, '87; red. by V. A. Wheelock.	11, 12, '88	.....	10.58
1887	V. A. Wheelock...	V. A. Wheelock ...	V. A. Wheelock.....	11, 12, '88	3898	9.38

N. W. ¼ of N. E. ¼ 33, 96, 39.

1881	Carlos S. Greeley..	L. C. Washburn...	L. C. Washburn.....	9, 16, '82	1889	8.26
1882	" "	" " ...	" "	3, 31, '83	1317	7.44
1883	H. F. Conklin.....	H. F. Conklin.....	H. F. Conklin.....	2, 15, '84	522	6.72
1884	" "	No name.....	" "	5, 2, '85	1912	6.69
1885	" "	H. F. Conklin.....	" "	10, 6, '86	2993	5.50
1886	" "	No name.....	" "	9, 26, '87	3201	7.28
1887	" "	H. F. Conklin.	" "	10, 9, '88	3359	8.16

1881 *to* 1887, *Inclusive*—Continued.

S. ½ N. E. ¼ 33, 96, 39.

Year.	Grantees under Greeley title.	Taxed to—	Paid by—	When paid.	No. of rec't.	
1880	W. G. Sandercock.	W. Sandercock....	W. Sandercock.....	1, 24, '82	180	14.40
1882	" "	" "	" "	2, 19, '83	435	15.80
1883	" "	" "	" "	2, 15, '84	524	11.84
				3, 26, '85	1215	6.56
1884	Wm. S. Yelland ...	No name...	W. S. Yelland.....	9, 19, '85	2389	6.70
			W. Sandercock.....	3, 25, '86	1282	} 5.10
1885	" " ...	W. S. Yelland.....	" "	9, 29, '86	2760	}
1886	" " ...	No name.....	" "	3, 23, '87	1047	13.72
1887	" " ...	S. Yelland.....	" "	1, 10, '88	12	17.10
						187.48

193 N. E. ¼ of S. W. ¼ 33, 96, 39.

1881	T. B. Conklin.....	T. B. Conklin..	T. B. Conklin.....	2, 18, '82	578 R.	7.20
1882	T. B. Conklin.....	" "	" "	2, 27, '83	669 R.	7.52

N. W. ¼ of S. W. ¼ & N. W. ¼ 33, 96, 39.

1881	T. B. Conklin.....	T. B. Conklin...	T. B. Conklin.....	2, 18, '82	578 R.	36.00
1882	" "	" "	" "	2, 27, '83	669 R.	37.60

S. ½ of S. W. ¼ 33, 96, 39.

1881	Wm. Kenyon.....	Wm. Kenyon.....	Wm. Kenyon.....	3, 31, '82	1356 R.	14.54
1882	T. B. Conklin.....	T. B. Conklin..... ..	T. B. Conklin.....	2, 27, '83	669 R.	15.04

All of W. ¼ 33, 96, 39.

1883	T. B. Conklin.....	T. B. Conklin.....	T. B. Conklin.....	4, 36, '84	2009	27.42
1884	" "	No name.....	" "	9, 30, '85	2647	62.42
1885	" "	" "	" "	9, 30, '86	2884	43.30
1886	" "	" "	" "	10, 13, '87	3448	65.66
				3, 30, '88	2053	42.02
1887	" "	T. B. Conklin.....	" "	10, 9, '88	3358	34.36

S. E. ¼ 33, 96, 39.

1881	Carlos S. Greeley..	C. S. Greeley.....	C. S. Greeley.....	2, 14, '82	499	28.80
1882	Louis Wheelock..	Lewis Wheelock..	Lewis Wheelock.....	3, 23, '83	1189	30.38
1883	" " ...	J. E. Wheelock....	J. E. Wheelock.....	10, 2, '84	2580	31.73
1884	" " ...	No name.....	J. E. Wheelock.....	9, 29, '85	2601	31.21
			L. Wheelock.....	9, 29, '86	2762	16.25
1885	" " ...	L. Wheelock.....	L. G. Lackey.....	6, 5, '86	2000	5.26
1886	" " ...	No name.....	L. Wheelock.....	9, 30, '87	3371	32.55
1887	" " ...	L. Wheelock.....	J. E. Wheelock.....	11, 14, '88	3930	36.78

S. E. ¼ 19, 96, 41.

1881	Carlos S. Greeley..	C. S. Greeley.....	C. S. Greeley.....	2, 2, '82	316	31.04
1882	Frank Wilmerton.	F. Wilmerton.....	F. Wilmerton.....	1, 5, '83	20	37.12
1883	" "	" "	" "	2, 22, '84	725	35.20
1884	" "	No name.....	" "	5, 11, '85	1948	33.95
1885	" "	Frank Wilmerton.	" "	5, 20, '86	1937	30.88
			" "	3, 30, '87	1932	20.45
1886	" "	No name.....	" "	10, 25, '87	3584	17.42
1887	" "	Frank Wilmerton	" "	10, 30, '88	4151	37.51
						849.61
194						
1881	Benj. S. West.....	N. E. ¼ O. P. Miller.	Sold 10, 2, '82; red. by B. S. West.	10, 25, '83	.....	} 89.52
		S. E. ¼ Thos. J. Patton.	Sold 10, 2, '82; red. by B. S. West.	10, 25, '83	.....	}
1882	" "	B. S. West.....	B. S. West.....	2, 23, '83	541 R.	74.24
1883	" "	" "	" "	2, 29, '84	975 R.	70.40
1884	" "	No name	" "	4, 25, '85	1862 R.	67.23
1885	" "	" "	" "	9, 23, '86	2595 R.	30.30
1886	J. L. Matson.....	" "	J. L. Matson.....	10, 28, '87	3008 R.	80.63
			Joseph Matson.....	.....	3516	34.95
1887	" "	B. S. West	Joseph Matson.....	10, 22, '88	3491	34.98

S. E. ¼ 20, 97, 40.

1881	F. Y. Walker.....	F. Y. Walker.....	F. Y. Walker.....	2, 14, '82	502	20.48
1882	" "	" "	" "	2, 13, '83	348	22.00
1883	" "	Walker & Rhomberg.	Walker & Rhomberg.....	2, 28, '84	967	21.76
1884	" "	" "	" "	1, 10, '85	34	23.04
1885	" "	Unknown.....	F. Y. Walker.....	2, 2, '86	143	20.80
1886	" "	No name.....	Walker & Rhomberg.....	3, 21, '87	1601	23.26
1887	" "	E. T. Walker	F. Y. Walker.....	3, 15, '88	776	28.08
						641.47

STATE OF IOWA, } ss:
O'Brien County, }

I, F. N. Derby, treasurer of O'Brien county, do hereby certify that the annexed statement, consisting of seven pages, correctly shows the names of the parties to whom the following lands, to wit—

The W. ½ S. W. ¼ 19, 96, 39;
" W. ½ S. E. — 19, 96, 39;
" W. ½ S. W. ¼ 20, 96, 39;
All of sec. 33, 96, 39;
195 All of sec. 33, 96, 39;
The S. E. ¼ of sec. 19, 96, 41;
The E. ½ sec. 30, 96, 41.
" S. E. ¼ sec. 20, 97, 40—

all in O'Brien county, Iowa, were taxed for the years 1861 to 1887, inclusive, as shown by the tax-lists in my office for said years, and that said lists correctly shows by whom the taxes were paid on said lands for the years 1880 to 1887, inclusive, respectively, together with the dates and amounts so paid for each of said years, as the same now appears upon the stubs of the tax receipts and tax-lists in my office for each of said years respectively, and that the said statements shows the total amount of taxes paid on all said lands for the years 1861 to 1879, inclusive, as shown by the tax-lists for each of said years in my said office.

I further certify that said statement shows by whom and when all redemptions were made from tax sales for said years 1881 to 1887, inclusive, and the amounts so paid for redemption, as appears upon the auditor's books in the auditor's office in said county, and also as shown by the tax-sale register of the tax sales for said years, which tax-sale register is in my said treasurer's office.

Witness my hand this 27th day of Sep., 1889.

F. N. DERBY,
County Treasurer.

Fees, $10.00.

196 [Endorsed:] Filed Dec. 24th, 1889. A. J. Van Duzee, cl'k. J. H. Bolton, d'p'ty.

197 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. B. CONKLIN *et al.*
vs.
FREDERICK WEHRMAN. } In Equity.

Stipulated Facts.

It is stipulated, agreed, and admitted by the parties to this suit as follows:

1. That Ex. "A" attached to defendant's answer herein is a true and correct copy of the alleged judgment annexed to and made a

part of the petition in the action at law by attachment proceedings in the district court of O'Brien county, Iowa, wherein Greeley, Gale & Co. were plaintiffs and Adolph Wehrman was defendant, being the action by attachment proceedings referred to in the pleadings in this suit, and that no other copy of judgment was attached to said petition in the attachment proceedings.

2. That after said attachment suit of Greeley, Gale & Co. against Adolph Wehrman was removed or attempted to be removed on change of venue to the district court of Woodbury county, Iowa, and before judgment was rendered or attempted to be rendered therein, there was filed in said attachment suit in the district court of Woodbury county, Iowa, and in the clerk's office of said court in said attachment proceedings a transcript of record and proceedings from the circuit court of Pierce county, within and for the State of Wisconsin, a copy of which transcript is hereto annexed, marked Ex. "A," made a part of this stipulation, and admitted in evidence in this case with the same force and effect as a duly certified
198 copy thereof from the files and records of the district court of Iowa within and for Woodbury county might be, which said transcript still remains of file and record in the district court of Iowa within and for Woodbury county in said attachment suit of Greeley, Gale & Co. against Adolph Wehrman, and that on such transcript as evidence in said attachment suit the judgment therein was rendered or attempted to be rendered by said district court of Iowa within and for Woodbury county against said Adolph Wehrman.

3. It is further stipulated and agreed and admitted by the parties that the said copy, Exhibit "A," is a true and correct copy of the original records and proceedings in the case of Greeley, Gale & Co. against Adolph Wehrman and Augusta Wehrman in the circuit court of Pierce county, in the State of Wisconsin, and that the said Exhibit "A" hereof may be used as evidence on the trial of this cause with the same force and effect as a duly certified transcript of the said records and proceedings might be.

4. Nothing in this stipulation contained shall be construed as an admission by the defendant of the regularity, validity, or sufficiency of the proceedings in said attachment suit of Greeley, Gale & Co. against Adolph Wehrman, the intention hereof being to place the facts touching said suit before the court, along with the other evidence in the case, to enable the court to determine whether or not the proceedings and judgment in said attachment suit were valid or void and for use in said cause so far as the same may be material or relevant to the issues therein.

Dated November 5th, 1889.

W. L. JOY,
WARREN WALKER,
E. C. HERRICK,
Solicitors for Complainant.
J. W. BULL,
CHAS. A. CLARK,
Solicitors for Defendant.

199 EXHIBIT "A."

Circuit Court, Pierce County.

CARLOS S. GREELEY, DANIEL B. GALE, and Cyrus B. Burnham, Partners Doing Business under the Firm Name and Style of Greeley & Gale,
vs.
ADOLPH WEHRMAN. } Summons for Relief.

The State of Wisconsin to the above-named defendant *you and each of you*:

You are hereby summoned and required to answer the complaint of the above-named plaintiff-, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers at their office, in the city of Prescott, in said county, within ninety days after the service hereof, exclusive of the day of such service.

And if you — to answer said complaint as hereby required the plaintiffs will apply to the court for their relief demanded in complaint.

Witness the Hon. S. S. N. Fuller, judge, at Prescott, Dec. 16, 1859.

I. S. WHITE & JAY,
Pl'ffs' Attorneys.

STATE OF WISCONSIN, } ss:
Pierce County, }

I certify that I served the within summons and complaint on the within-named Adolph Wehrman by delivering him true copies thereof on the 17th day of December, A. D. 1859, in the city of Prescott.

H. P. AMES,
Sheriff, Pierce County,
By E. N. REDMAN, *Deputy.*

200 State of Wisconsin, Pierce County Circuit Court.

CARLOS S. GREELEY, DANIEL B. GALE, and CYRUS B. BURNHAM, Partners Doing Business under the Firm Name of Greeley & Gale,
vs.
ADOLPH WEHRMAN and AUGUSTA WEHRMAN.

The complaint of the above-named plaintiffs shows to this court, in information and belief, that at the times hereinafter mentioned they were partners doing business under the firm name and style of Greeley & Gale.

2. That upon the 12th day of April, A. D. 1858, the defendant Adolph Wehrman executed and delivered to these plaintiffs his three promissory notes for a valuable consideration, by the first of

which he promised to pay to the plaintiffs or to their order, three months after the date thereof, the sum of five hundred and eighty-six & $\frac{25}{100}$ dollars, with interest at ten per cent. per annum from date; and by the second of which he promised to pay to the order of the plaintiffs, six months after the date thereof, the sum of five hundred and eighty-six & $\frac{25}{100}$ dollars, with interest at ten per cent. per annum after date; and by the third of which he promised to pay to the order of these plaintiffs, nine months after the date thereof, the sum of five hundred and eighty-six & $\frac{25}{100}$ dollars, with interest at ten per cent. per annum after date.

4. And plaintiffs further shows that thereupon and at the same time the said defendant, Adolph Wehrman, together with the defendant Augusta Wehrman, his wife, as collateral security, to secure the payment of the said several sums of money mentioned in said notes, duly executed and delivered to these plaintiffs their mortgage in the form of a trust deed, whereby they, as the party of the first part, granted, bargained, and sold to one R. C. Cumbey as
201 party of the second part, in trust for the purposes hereinafter mentioned, all of lot four, in block B, in the village of Prescott, in said county of Pierce, State of Wisconsin, together with the buildings thereon, to have and hold forever in trust for and on the condition following, to wit: That if the defendant Adolph Wehrman should well and truly pay the said notes and interest thereon when the same should become due and payable according to the tenor thereof, then said deed (being such mortgage aforesaid) should be void and the property therein mentioned released at the cost of the said party of the first part; but that if said party of the first part, said defendant, should fail to pay the said notes or any part thereof, the interest or any part thereof, when the same should become due and payable, then the whole of said notes should be due and payable, and said deed (being such mortgage aforesaid) should remain in force, and the said R. C. Cumbey, such trustee, was authorized to proceed to sell said property or any part thereof at public vendue to the highest bidder for cash after giving due notice thereof, and upon such sale execute and deliver to the purchaser or purchasers thereof a deed in fee simple and out of the proceeds of such sale to pay the costs and expenses thereof and whatever sum of money should remain due upon said notes, both principal and interest, and pay the surplus, if any, to the said defendant.

4. That said deed (being such mortgage) was duly recorded in the office of the register of deeds in and for said county of Pierce on the fourth day of May, A. D. 1858, at five o'clock p. m., and recorded in Book C of Mortgages, pages 54, 55, & 56.

5. That the plaintiffs were at the time of the giving of the said notes and mortgages the real parties in interest, and they
202 were and still are the legal holders and owners thereof.

6. That, although said notes became due and payable before the commencement of this action, the defendant A. Wehrman has wholly failed to comply with the conditions of the said notes and mortgages by omitting and neglecting to pay the amount thereof

except the sum of one hundred and seventy-one & $\frac{72}{100}$ dollars, which was paid on the 24th day of August, 1858, and that there is now due the plaintiffs thereon the sum of fo-rteen hundred and eighty-seven dollars and three cents, with interest thereon at ten per cent. per annum from the 12th day of April, 1858, together with interest on said payment of $171.72 from April 12th, 1858, to the date of said payment.

7. That no proceedings have been had at law or otherwise for the recovery of said sum of money, or either or any of them, so secured by said notes and mortgages as aforesaid, and that no part thereof has been collected, except the sum of $171.72, as above stated.

The plaintiffs therefore demand that the defendants and all persons claiming under them subsequent to the commencement of this action may be barred and foreclosed of all right, claim, lien, and equity of redemption in and to said mortgaged premises; that the premises may be decreed to be sold according to law; that the moneys arising from the sale may be brought into court; that the plaintiffs may be paid the amounts due on said notes and mortgage, with interest to the time of such payment, and the costs and expenses of this suit so far as the amount of such moneys properly applicable thereto will pay the same, and that the defendant Adolph Wehrman may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto.

203 And that the plaintiffs may have such other and further relief or both in the premises as shall be just and equitable.

I. S. WHITE & JAY,
Plaintiffs' Attorneys.

STATE OF WISCONSIN, } ss:
Pierce County, }

R. C. Cumbey, being duly sworn, deposes and says that he is the agent of the above-named plaintiffs, specially made such by them for the collecting of the debt set forth in the above complaint and fully empowered by plaintiffs to take all needful steps and do all needful acts in and about the same, and to commence and prosecute all necessary actions therefor; that he has read the above and foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true; that the grounds of his belief are the notes and mortgages above mentioned, which have been in his possession up to the time of the commencement of this action; the representation made to him by the plaintiffs, which he believes to be true, and the admission of the defendant Adolph Wehrman, who told deponent that he owed the same to plaintiffs and said he would pay them as soon as he could, and in several conversations which deponent has had with him concerning the same had admitted said notes and mortgages to be correct and never at any time objected to them.

That the reason this verification is not made by the plaintiffs or

either of them is that they are not either of them residents of this State nor are now in said Pierce county, where this action is brought and deponent resides.

R. C. CUMBEY.

204 Sworn and subscribed to this 16th day of December, A. D. 1859, before me—

P. V. WISE,
Notary Public.

205 Pierce County Circuit Court.

CARLOS S. GREELEY, DANIEL B. GALE, and CYRUS B. BURNHAM, Partners Doing Business under the Firm Name of Greeley, Gale & Co., *vs.* ADOLPH WEHRMAN and AUGUSTA WEHRMAN. } May Term, 1860.

Present: Hon. S. S. N. Fuller, circuit judge.

On reading and filing the certificate of Henry P. Ames, sheriff of Pierce county, proving the service of the summons and complaint in the action, and the affidavit of H. A. Jay that no answer has been put in nor appearance entered by either of the defendants, and that they are neither of them absentees, and that notice of the pendency of this action in due form was filed in the office of the register of deeds in and for said county on the 17th day of December, 1859, and the proper order having been made to compute the amount due to the plaintiff upon said notes and mortgages, and the same having been duly made by I. S. White, who was sworn in open court for that purpose, whereby it appears that there is now due the plaintiffs thereon the sum of nineteen hundred and forty-two & $\frac{99}{100}$ dollars, and on motion of I. S. White and Jay, attorneys for the plaintiffs, it is adjudged that the mortgaged premises described in the complaint in this action as hereinafter set forth, or so much thereof as may be necessary and as may be sold separately without prejudice to the interest of the parties thereto, be sold at public auction in the said county of Pierce by P. V. Wise, Esq., referee for the purpose by the court appointed; that said referee give public notice of the time and place of such sale according to law and the practice of this court that either or any of the parties may purchase at such sale; that the said referee execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the moneys arising from such sale after
206 deducting the amount of his fees and expenses on such sale, and any liens or liens upon said premises so sold at the time of such sale for taxes or assessments, the said referee pay to the plaintiffs or their attorneys the sum of thirty-eight dollars and eighty-five cents adjudged to the plaintiffs for costs and charges in this action, with interest from the date hereof, and also the amount so found due as aforesaid, together with the legal interest thereon from the date hereof, or so much thereof as the purchase-money of the mortgaged premises will pay of the same; take a receipt

thereof and file it with this report of sale; that he deposit the surplus money, if any, in the City Bank of Prescott, subject to the order of the court, immediately after he receives the same; that he make a report of such sale and file it with the clerk of this court with all convenient speed; that if the proceeds of such sale be not sufficient to pay the amount so reported due the plaintiffs, with interest and costs as aforesaid, the said referee specify and report the amount of such deficiency in his report of sale, and that the defendant Adolph Wehrman be adjudged to pay the same to the plaintiffs, and that the purchaser or purchasers at such sale be let into possession on production of the referee's deed and certified copy of the order confirming the report of sale.

And it is further adjudged that the defendant and all persons claiming under them or either of them after the filing of said notice of pendency of this action be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold or any part thereof.

The following is a description of the mortgaged premises hereinbefore mentioned, to wit, lot No. four (4), in block L, in the village of Prescott, in said county.

By the court:

S. S. N. FULLER,
Circuit Judge.

207 Circuit Court.

C. S. GREELEY, D. B. GALE, C. BURNHAM, Partners, &c., *vs.* ADOLPH WEHRMAN, A. WEHRMAN.

On reading and filing the report of P. V. Wise, referree appointed to make *sale* herein of the sale of the mortgaged premises in this case, whereby it appears that there remains due and unpaid, after applying the whole of the purchase-money received on said sale, a deficiency of one thousand six hundred and forty & $\frac{33}{100}$ dollars, and, on motion of White & Jay, attorneys for the plaintiffs, ordered that the same be confirmed, unless cause be shown to the contrary thereof, within eight days from the entry of this order, and that plaintiffs have leave to docket judgment and have execution therefor.

Dated Sept. 12, 1860.

I. S. WHITE & JAY,
Plaintiffs' Attorneys.

A. H. YOUNG, *Clerk.*

STATE OF WISCONSIN, *Pierce County,* } ss:

I, Smith R. Gunn, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a full and true transcript of the records of the proceedings and judgment of the said court in the case of Carlos S. Greeley, Daniel B. Gale, and Cyrus B. Burnham against Adolph Wehrman and Augusta

Wehrman and of the whole thereof as the same remains of record in my office in the records of said *corut.*

Witness my hand and the seal of said court, at Prescott, in said county, this 3rd day of December, 1860.

(Seal of said court duly attached.)

SMITH R. GUNN,
Clerk Circuit Court.

208 STATE OF WISCONSIN, } ss:
Pierce County, }

I, Henry D. Barron, presiding judge of the circuit court in and for said county, the same being a court of record having a seal, do hereby certify that Smith R. Gunn is clerk of said court and was such clerk at the time o*d* signing the above certificate; that his signature thereto is genuine and his attestation in due form of law.

In testimony whereof I hereunto subscribe my name, at Pekin, this 12th day of December, 1860.

HENRY D. BARRON,
Circuit Judge, 8th Judicial Circuit of Wisconsin.

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Attorneys.	Parties.	Judgment rendered, against whom.	Am't of.	Date of rendition.
White & Jay..	C. S. Greeley, D. B. Gale, & C. Burnham, partners, &c.; Adolph Wehrman and Augusta Wehrman, defendants.	A. Wehrman ..	$1,640 30	Docketed Sept. 12, 1860, at 3 o'clock p. m.

210 [Endorsed:] Filed Dec. 24th, 1889. A. J. Vanduzee, cl'k, by J. H. Bolton, deputy.

211 And on the 10th day of May and 14th day of June, A. D. 1889, the same being the 4th and 10 days of the regular May, A. D. 1889, term of said court, the following proceedings were had in the said cause by said court and duly entered of record, to wit:

T. B. CONKLIN *et al.*
&
FREDERICK WEHRMAN. } No. 93. Equity.

And now, at this time, to wit, May 10th, 1889, this cause came on to be heard upon demurrer of defendant to complainants' bill of complaint, complainants appearing by E. C. Herrick, W. S. Joy, and Warren Walker and defendant appearing by Charles A. Clark, and after argument of counsel said demurrer, being fully submitted to the court, is taken under advisement.

T. B. CONKLIN *et al.*
&
FREDERICK WEHRMAN. } No. 93. Equity.

And now, at this time, to wit, June 14th, 1889, this cause having been heretofore, to wit, May 10th, 1889, duly submitted to the court upon the argument of counsel upon defendant's demurrer to the bill of complaint filed herein, and the court, being now fully advised in the premises, finds that said demurrer should not be sustained.

Accordingly it is the order and judgment of the court that defendant's demurrer to the bill of complaint herein be, and the same is hereby, overruled.

212 And afterwards, to wit, on the 6th, 7th, and 29th days of May, A. D. 1890, the same *during* the 1st, 2nd, and 9th days of the regular May, A. D. 1890, term of said court, the following proceedings were had in said cause by said court and duly entered of record, to wit:

T. B. CONKLIN *et al.*
&
FREDERICK WEHRMAN. } No. 93. Equity.

And now, at this time, to wit, May 6th, 1890, it being the time heretofore fixed for the trial of this cause and the same coming up before the court in open session, the complainants appear by their attorneys, E. C. Herrick, Joy, Hudson, Call and Joy, and Warren Walker, and the defendant appears by his attorney, Charles A. Clarke, and the trial of this cause is commenced, and after the introduction of the evidence and the argument of counsel in part the further hearing of this cause is postponed until 9 o'clock a. m. May 7th, 1890.

T. B. CONKLIN *et al.*
&
FREDERICK WERHMAN. } No. 93. Equity.

And now, at this time, to wit, May 7th, 1890, the parties *of* this action and their attorneys being present, the trial of this cause is resumed, and the argument of counsel being concluded this cause is fully submitted to the court and taken under advisement.

213 T. B. CONKLIN and E. F. CONKLIN
vs.
FREDERICK WEHRMAN. } No. 93. In Equity. Degree for Complainants.

And now, to wit, on this the 7th day of May, A. D. 1890, it being the second day of the regular May term, A. D. 1890, of said court, this cause coming on for trial and hearing upon the issues joined therein, and the complainants appearing by their solicitors and counsel, E. C. Herrick, Esq, and Joy, Hudson, Call & Joy, and W-r-ren Walker, Esq., and the defendant appearing by his solicitors and

counsel, Chas. A. Clark, Esq., and J. W. Bull, Esq., and the evidence in said cause having been heretofore taken and said evidence having been duly filed in said cause and offered by each party respectively, and the said cause having been fully argued and submitted and taken under advisement by the court, now, on this 29th day of May, A. D. 1890, the court, being fully advised in the premises, finds for the complainants.

It is now therefore hereby ordered, adjudged, and decreed that the complainants have judgment as prayed for in their complaint against the defendant; that all adverse claims of the defendant and all persons claiming the west half of section thirty-three (33), in township nine'-six (96) north, of range thirty-nine (39) west, of the 5th P. M., in O'Brien county, Iowa, the premises described in said complaint, or any part thereof, through or — said defendant are
hereby adjudged and decreed to be invalid and groundless,
214 and that the- be, and they are hereby, decreed and adjudged to be the true and lawful owners of the said land above described and every part and parcel thereof, and that their title thereto is adjudged to be quieted in them against all claims, demands, or pretensions of the defendant, who is hereby perpetuatly enjoined from setting up any claims thereto or any part thereof.

And it is further ordered, adjudged, and decreed that the defendant, Frederick Wehrman, be perpetually anjoined and restrained from proceeding further against complainants herein in the action commenced by said defendant against these complainants in this court for the recovery of the possession of the above-described premises, being the action in this court entitled Frederick Wehrman against T. B. Conklin and E. F. Conklin, No. 117, at law, and also from instituting any action or proceeding in any new or other action at law for the recovery of the possession of said premises or any part thereof.

And it is further ordered, adjudged, and decreed that the complainants do have and recover their costs, hereby taxed at —— dollars, against the defendant.

Thereupon the defendant prayed an appeal, which was allowed, and the bond, to operate as a supersedeas, fixed at five hundred dollars.

[Endorsed:] No. 93. Eqt. T. B. Conklin *et al.* & Fred'k Wehrman. Decree. Filed May 29th, 1890. A. J. Vanduzee, cl'k. J. H. Bolton, d'p'ty.

215 And afterwards, to wit, on the 21st day of August, A. D. 1890, there was filed in the office of the clerk of said court in said cause a supers*id*as bond and citation; which bond and citation are in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

T. B. CONKLIN *et al.*
vs.
FREDERICK WEHRMAN.

Know all men by these presence that we, Frederick Wehrman, as principal, and Joseph Sampson, of Sioux City, in the State of Iowa, as surety, are held and firmly bound unto T. B. Conklin and E. B. Conklin, also of the State of Iowa, in the penal sum of five hundred dollars, to be paid to the said T. B. Conklin and E. F. Conklin, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, or assigns, firmly by these presents.

Dated this 10th day of July, A. D. 1890.

Whereas the above-named Frederick Wehrman hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the northern district of Iowa, in the western division thereof:

Now, therefor-, the condition of this obligation is such that
216 if the above-named Frederick Wehrman shall prosecute his said appeal to effect and if he fail to make his plea good shall answer all damages and costs, then this obligation to be void; otherwise to remain in full force and effect.

FREDERICK WEHEMAN,
By CHAS. A. CLARK, *Principal.*
JOSEPH SAMPSON, *Surety.*

STATE OF IOWA, }
Woodbury County, } ss:

I, J. H. Bolton, deputy clerk of the United States court for the northern district of Iowa, at Sioux City, in the western division thereof, hereby certify that I personally know Joseph Sampson, the surety in the above-entitled bond, and that in my judgment he is fully responsible for the penalty of said bond, and that said bond would be approved by me if submitted to me for that purpose.

Witness my hand and the seal of said court, at Sioux City, this 12th day of July, 1890.

J. H. BOLTON,
D'p'ty U. S. C. Cl'k.

This bond approved and accepted, to operate as a supersedeas, this 21st day of July, 1890.

O. P. SHIRAS,
U. S. Judge.

[Endorsed:] No. 93. Equity. T. B. Conklin *et al.* & Fred. Wehrman. Supersedeas bond. Filed Aug. 21st, 1890. A. J. Vanduzee, cl'k. J. H. Bolton, d'p'ty.

217 *Citation.*

By the Honorable O. P. Shiras, one of the judges of the circuit court of the United States for the northern district of Iowa and western division.

To T. B. Conklin and E. F. Conklin:

Whereas Frederick Wehrman has lately appealed to the Supreme Court of the United States from a certain degree recently rendered in the circuit court of the United States for the northern district of Iowa, in the western division thereof, made in favor of you, the said T. B. Conklin and E. F. Conklin, and has filed the security required by law, you are therefor- hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Tuesday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at Sioux City, in the northern dis. of Iowa, in the eighth circuit, on the 21*th* day of July, in the year of our Lord *A. D.* 1890.

O. P. SHIRAS, *U. S. Judge.*

Service of the foregoing citation accepted and copy thereof received this 2d day of August, 1890.

E. C. HENICK,
W. S. JOY,
Solicitors for T. B. Conklin and E. F. Conklin.

[Endorsed:] 93. Equity. T. B. Conklin *et al.* & Fred. Mehrman. Citation. Filed August 21st, 1890.

218 And afterwards, to wit, May 29th, 1890, there was filed in said cause the court's opinion in said cause; which opinion is in words and figures as follows, to wit:

In the United States District Court in and for the Northern District of Iowa, Western Division, May Term, 1890.

T. B. CONKLIN
vs.
FREDERICK WEHRMAN. } Equity.

Bill to quiet title of realty and enjoin action at law, submitted on pleadings and prop.

E. C. Herrick, W. L. Joy, Warren Walker for complainants.
Chas. A. Clark for defendant.

Thereas I. From the evidence submitted in this case the following facts are deducible:

That in June, 1857, Adolph Wehrman bought this land in dispute in this case, together with other lands, from the United States and obtained a patent therefor on or about the 1st day of December, 1859, the said realty being situated in O'Brien county, Iowa.

That in 1858 said Adolph Wehrman became indebted to the firm of Greeley, Gale & Co., of St. Louis, Mo., and as evidence of such indebtedness executed his promissory notes to such firm.

That in 1859 said Adolph Wehrman resided in Pierce county, Wisconsin, and having failed to pay his said notes to said Greeley, Gale & Co. the said firm brought suit thereon in the circuit court of Pierce county against said Wehrman, due personal service of process being made upon the said Wehrman, and also
219 asking the foreclosure of a mortgage given by said Wehrman on a lot in Prescott, Wisconsin.

That a decree of foreclosure was had in said cause, the realty sold, the proceeds realized were applied to the liquidation of the amount due in part, and that for the deficiency a judgment was duly docketed against said Adolph Wehrman on the 12th day of September, 1860, for $1,640.30.

That on the 14th day of January, 1861, Greeley, Gale & Co. brought suit in the district court of O'Brien Co., Iowa, against Adolph Wehrman upon a transcript of the judgment rendered in Pierce county, Wisconsin, and caused a writ of attachment to be issued by the clerk of said court against the property of said defendant, Adolph Wehrman.

That at the time named said O'Brien county was a newly organized county and no seal had as yet been provided for the use of the clerk of the district court for said county.

That in the writ of attachment so issued such fact was recited, and the clerk added a scroll to the writ as the only seal or semblance thereof that could be then placed thereon.

That said writ of attachment so issued was levied upon the realty in question by the sheriff of said county.

That the original notice of the commencement of said action by attachment was personally served upon Adolph Wehrman in Pierce county, Wisconsin, on the 25th day of January, 1861.

That on the 17th day of December, 1859, said Adolph Wehrman executed a deed of conveyance of some 2,060 acres of land in O'Brien county, Iowa, to Frederick Wehrman, including the land in controversy, which deed was recorded in said O'Brien county on the 2d day of January, 1860.

220 That the action by attachment pending in O'Brien county was changed by order of court to Woodbury county upon the application of the plaintiff therein, and on the 17th day of September, 1861, judgement was rendered in favor of the plaintiff in the sum of $1,809.48, it being further ordered that the property attached should be sold to satisfy the judgement.

No appearance for Adolph Wehrman was entered in the cause.

That said Greeley, Gale & Co. brought a suit in equity in the district court of O'Brien county to the June term, 1862, against Adolph Wehrman, Augusta Wehrman his wife, and Frederick Wehrman, for the purpose of setting aside the conveyance of the lands in O'Brien county by Adolph to Frederick Wehrman on the ground that such conveyance was without consideration and made to defraud complainants.

That personal service of the original notice of such suit was made upon each of the defendants above named in Pierce county, Wisconsin. No appearance was made by said defendants or either of them in said suit, and on the 10th day of June, 1862, a default was taken and a decree entered in said cause setting aside such conveyance to Frederick Wehrman as a fraud upon the rights of complainants, decreeing said lands to be subject to the judgment in the attachment suit and subject to be sold thereon as the property of Adolph Wehrman and barring Frederick Wehrman from asserting any right, title, or claim to said realty by virtue of said conveyance.

That on the 16th day of June, 1862, an execution was issued upon the judgement in the attachment suit under which the lands in question were sold to Carlos Greeley, and subsequently a sheriff's deed was executed to him and duly recorded.

That by proper conveyances the lands in dispute were conveyed to T. B. Conklin, the present complainant, in 1881 and 1882.

221 That from 1861 to the time of the bringing this suit the taxes on said lands were paid by Greeley, Gale & Co., Carlos S. Greeley, and his grantees, including complainant. It does not appear that either Adolph Wehrman or Frederick Wehrman ever paid any taxes on said lands or any part thereof.

That since 1882 the complainant, in the full belief that he was the owner of the lands in question, has erected thereon a dwelling-house, a barn, a granary, corn cribs, and made other improvements, including breaking up and putting under cultivation 270 acres of the lands.

That it is not shown what consideration, if any, Frederick Wehrman paid to his brother Adolph for the conveyance of the lands to him, nor does it appear that he had financial ability to make such purchase.

That the taxes of 1858 and 1859 were not paid, and in the year 1860 the treasurer of O'Brien county sold the lands in question for such delinquent taxes to one C. C. Orr, to whom a tax deed was issued in due time and the same was duly recorded, and in May, 1871, said Orr executed a subclaim deed for said lands to Carlos S. Greeley.

From the foregoing statement of facts it appears that the complainant has made out a title of the lands unless the contention of defendant is sustained, to wit, that the proceedings by attachment against Adolph Wehrman and the bill against the present defendant and the decree based thereon are wholly void, and that the tax title is void because of want of authority to make the sale in the manner in which it was made.

The position of the defendant is that to give the court jurisdiction in the attachment suit against Adolph Wehrman it was necessary that there should be a valid writ of attachment and levy

222 thereof upon the land, as Wehrman was not served with notice within the limits of the territorial jurisdiction of the court. The principal objection urged against the validity of these

proceedings is that the writ of attachment did not have attached thereto a proper seal to authenticate it.

The general *will* is well settled as to the class of writ or process issued under the seal of the court that the absence of the seal renders the writ void. The absence of the seal shows that the writ has not been perfected. Lacking the proper evidence of issuance, it cannot be presumed that it was intended to be issued, and it is therefore without validity.

The modern tendancy, however, is to a relaxation of the former strictness in regard to curing formal defects in writs or other process.

By the provisions of the statutes of Iowa, now in force, the failure to attach the seal could be cured by an amendment.

Is the general rule, however, to be applied to a case of the peculiar character now under consideration? It is not an instance of a failure to attach the seal of the court to the writ, thereby justifying the conclusion that the same was issued without authority, but a case wherein the court was without an engraved seal and in lieu thereof a scroll was used, the writ on its face stating that the court had no other seal. The only purpose of the seal is to authenticate the issuance of the writ. May not such authentication be furnished in other ways, if for any reason a court is without an engraved seal for a time? Suppose that today the engraved seal of O'Brien county should be destroyed or stolen, must all the judicial proceedings therein be brought to a standstill awaiting the procurement of another engraved seal? Would not this be subverting substance to mere form? Would it not be permissible for the court to continue
223 the issuance of writs of attachment and execution having attached thereto a scroll as a seal, the writ on its face showing the reason thereof?

The power to issue writs of attachment is conferred by the statutes of Iowa upon the courts of the State and is wholly independent of the made of authenticating the writ. The latter is merely the evidence of the exercise of the power by the court and it is certainly going to an extreme length to hold that the exercise of the power to issue the writ granted by the statute is wholly dependant upon the existance of an engraved seal, and that, in the absence thereof, the power of the court is in abeyance. Whatever is the solution of this question, it was involved in the issues presented by the bill in equity, filed by Greeley, Gale & Co., to set aside the conveyance of the realty by Adolph to Frederick Wehrman. It is not questioned that Greeley, Gale & Co. were creditors of Adolph Wehrman. Their claim had been established by a judgment duly obtained in Wisconsin. They were seeking to enforce the collection thereof by proceedings in O'Brien county.

Averring that the conveyance made to Frederick Wehrman was made in fraud of their rights and was colorable only, being without consideration, they brought a bill in equity against Adolph Wehrman and Frederick Wehrman for the purpose of setting aside the transfer to the latter. The question whether the attachment proceedings gave Greeley, Gale & Co. a standing sufficient to authorize

them to question the transfer to Frederick Wehrman lay at the very threshold of these proceedings. If there was ever *in* such conclusion touching the validity of the attachment writ, it was not an error affecting the jurisdiction of the court in the equity case. The court determined that Greeley, Gale & Co. were entitled to question the validity of the transfer of the realty, and the
224 effect of such decision and decree cannot be avoided by urging that the court erred in holding the writ of attachment to be valid. The State court had exactly the same jurisdiction to hear and determine the question of the validity of the seizure of the land under the writ of attachment as this court now has to investigate the same question. Being clothed with jurisdiction and having determined the question, its decision and decree are not void, but must be respected and enforced. So long as that decree remains in force it cannot be claimed that complainants are without title to the premises in dispute, for the sale made thereof to Carlos S. Greeley was in fact made under the authority of that decree.

If, however, the court is in error in the view taken of the force and effect to be given to the decree in equity setting aside the transfer to Frederick Wehrman, there is another and sufficient ground for a decree in favor of complainant.

The evidence shows that both Adolph and Frederick Wehrman had actual notice of the proceedings brought to enforce the collection of the debt due Greeley, Gale & Co. by a sale of the lands as the property of Adolph Wehrman. Frederick Wehrman knew that his title was attached. He permitted the decree to be taken, the sale to be made, and allowed Carlos S. Greeley to appear as the owner thereof for years. He never caused the lands to be assessed to himself, nor did he ever pay or offer to pay or attempt to pay any of the taxes assessed upon the property.

Parties purchasing from Greeley finally commenced improving the property by cultivating the soil and erecting buildings thereon. For more than twenty-five years Frederick Wehrman remained wholly silent, knowing that by his silence he must of necessity be misleading others, to their injury. In the bill filed in this cause it is charged that the transfer to him was without consideration and for fraudulent purposes, yet he does not testify in relation thereto.

225 There is no evidence showing that he ever paid anything for the lands, or that he, in fact, ever claimed the same as his own property except the bare fact that after a delay of a quarter of a century he brought an action in ejectment to obtain possession of the property. The evidence on behalf of complainant shows that Adolph Wehrman when he made the transfer was insolvent; that Greeley, Gale & Co. were pressing the collection of their claim; that Frederick Wehrman was not in possession of means to pay the value of the lands so transferred to him, and there is no evidence that he ever paid a dollar therefor or ever exercised any act of ownership over the same. The evidence therefore entirely justifies the finding that the transfer to the defendant was

without consideration and fraudulent as against Greeley, Gale & Co., and that Frederick Wehrman never was, in fact, the real owner of the lands.

Under these circumstances the complainant, on the double ground that the defendant is not, in fact, the real owner of the property and has no interest therein which he can avail himself of as against the equities of complainant, and that defendant has by his conduct estopped himself from asserting title against complainants, is entitled to a decree quieting his title against the claim now sought to be enforced by defendant and enjoining Frederick Wehrman from further prosecuting the action of ejectment pending in his name.

226 [Endorsed:] Filed May 29, 1890. A. J. Vanduzee, clerk.

227 In the Circuit Court of the United States for the Northern District of Iowa.

I, A. J. Van Duzee, clerk of said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of the *of the* pleadings, depositions, exhibits, documentary evidence, stipulations, record entries, and final decree, supersedeas bond, citation, and acceptance of service thereon in a certain cause pending and tried in said court, wherein T. B. Conklin and E. F. Conklin are complainants and Frederick Wehrman is defendants, and that annexed hereto are full, true, and complete copies of two opinions of the court in said cause as full, true, and complete as the original of the same now remain on file and of record in my office.

Seal Circuit Court U. S., Northern District of Iowa, Sioux City.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office, in Sioux City, in said district, this 4th day of October, A. D. 1890.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa,
By J. H. BOLTON, *Deputy.*

Endorsed on cover: Case No. 14,332. N. Iowa C. C. U. S. No. 292. Frederick Wehrman, appellant, *vs.* T. B. Conklin and E. F. Conklin. Filed October 18, 1890.

Supreme Court of the United States.

OCTOBER TERM, 1894.

FREDERICK WEHRMAN, *Appellant*,
vs.
T. B. CONKLIN AND E. F. CONKLIN, *Appellees*. } No.....

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR APPELLANT.

By Chas. A. Clark.

STATEMENT.

This is a suit in equity, brought by the appellees, Conklin and wife, to enjoin and restrain the appellant, Wehrman, from prosecuting his action at law in the court below, against said Conklin and wife, to recover possession of the lands in controversy.

The bill and answer show that Wehrman brought this action at law in the court below against appellees, who are in the actual occupancy and possession of the lands in controversy, to eject them from the lands. And that said action was pending in the court below when this suit in equity was instituted to restrain him from prosecuting it to judgment. (Record p. 14 Bill, and p. 59 Answer.)

Also that Wehrman's claim of title to the land is as follows:

1. His father or brother, Adolph Wehrman, purchased the land

in controversy from the United States and received a patent therefor December 1, 1859.

2. On the 17th day of December, 1859, said Adolph Wehrman and wife conveyed the land in controversy, with other lands, by deed of warranty to the appellant, Frederick Wehrman, for the expressed consideration in the deed of three thousand dollars. This deed was duly recorded in the proper county where the lands are situated. (Record pp. 1, 2, and Exhibit A p. 15 Bill, and pp. 41, 42 Answer.)

Conklin's claim of title to the lands, as set forth in his bill and admitted by the answer, is as follows:

After the lands were conveyed to appellant, and after his deed was on record, certain creditors of his grantor, Adolph Wehrman, commenced an action at law, aided by attachment proceedings, in the courts of O'Brien County, Iowa, where the lands are situated. It is charged and admitted that Adolph Wehrman was a citizen and resident of the State of Wisconsin, and in this attachment suit no service of summons or notice was had upon him in the State of Iowa. The suit was, therefore, strictly a proceeding in *rem* against a non-resident debtor.

The admitted fact shown by the bill and answer is that in this suit a writ of attachment was issued, *which was not tested by the seal of the court* in which the action was brought, as required by the statutes of Iowa. Under this pretended writ of attachment, an attempted levy was made by the sheriff on the lands in controversy, as the property of Adolph Wehrman, who had long before that time conveyed them away. And by virtue of this pretended seizure only, it is claimed that the Iowa courts acquired jurisdiction to render judgment in the attachment proceedings.

This, however, was not the only defect in the attachment proceedings. The notice or summons in that action (Record p. 22) informed Adolph Wehrman that the action was brought against him on a judgment rendered against him by the Circuit Court of Pierce County, Wisconsin, in May, 1860. The petition for the writ of attachment had annexed a transcript of a pretended judgment of May 12, 1860, which was a mere interlocutory decree in foreclosure proceedings, ordering sale of mortgaged property, and a report thereof, to the end that judgment and decree might be rendered against Adolph Wehrman for any deficiency, after the sale of such property. (Record 17, 19.)

There was, in other words, no money judgment against Adolph Wehrman in May, 1860, as described in the notice or summons served on him, and the petition or declaration against him in the attachment proceedings.

There was, however, in the foreclosure proceedings against him in the Circuit Court of Pierce County, Wisconsin, a decree for a deficiency of one thousand six hundred and forty and thirty-three one-

hundredths dollars, which decree was rendered *September 12, 1860.* (Record p. 21, Exhibit B 2, and p. 22 Exhibit B 3.)

And it was on this decree or judgment of *September 12th, 1860,* that judgment was taken against Adolph Wehrman in the foreign attachment proceedings, which described in the notice or summons and petition a judgment of *May, 1860.* And this was done without any attempt to amend the petition in the attachment suit, or to serve a new notice therein advising Adolph Wehrman of an action upon a different judgment from that which he had been summoned to defend, and from that which the petition called upon him to defend against. (Record pp. 121, 122, paragraphs 1, 2, 3, stipulated facts.)

Nor is this all. Adolph Wehrman was summoned to appear and defend the attachment proceedings at a term of court to be held in O'Brien county on the first Monday of June, 1861, and the writ of attachment seizing the lands, was returnable at a term commencing on the 3d day of June, 1861. The summons was served on him January 25th, 1861, and the so-called writ of attachment was levied January 14, 1861. (Record pp. 20 and 22.)

At that time, under the Iowa Statutes, it was the duty of the judge of the court to fix, by written order, filed with the clerk, the terms of said court. The judge did not perform this duty and did not fix a June term of court for 1861 until the 23d of March, 1861, so that when Adolph Wehrman was summoned to appear, and when the writ of attachment was made returnable to a June term of court, 1861, no such term had been fixed. (Record pp. 3 and 4 bill; and p. 45, answer.)

Adolph Wehrman never made any appearance in the attachment suit. After his default at the June term of court, at which he was cited to appear, the plaintiffs in that suit procured an order in vacation, changing the venue of this action in *rem* to Woodbury County, on the ground that there were not enough citizens in O'Brien County, where the suit was brought, to form a jury. Why a jury was needed to assess damages on a default does not appear. But the change was ordered, and the papers were sent to Woodbury County, without being in any manner certified under or verified by the seal of the court in which the suit was brought. On this transcript or copy of the papers, the District Court of Woodbury County, afterwards, on the 17th day of September, proceeded to enter judgment against Adolph Wehrman.

For the proceedings relating to this change of venue and judgment in Woodbury County, see Record pp. 4, 5, Bill, and pp. 17 to 25, Exhibits B, D, E and F. Also Answer, Record pp. 46, 47 and 48.

The judgment finally rendered against Adolph Wehrman was in *personam*, and ordered the property described *in* the writ of attachment, sold to satisfy the same. (Record p. 25, Exhibit F.)

It is needless to say that no property was described *in* the writ

of attachment, and hence no property seized was in fact referred to by this judgment, or ordered sold.

Having taken these nugatory and void proceedings, the creditors of Adolph Wehrman then brought a suit in equity in the District Court of O'Brien County, where the lands are situated, against Adolph Wehrman, Augusta Wehrman, his wife, and this appellant, Frederick Wehrman, for the purpose of subjecting the lands in controversy, and other lands, to the payment of the void judgment above referred to. The decree attempting to subject the lands to payment of the so-called judgment, is Exhibit H, Record pp. 26, 27.

It is charged by the bill (Record p. 6) that in this suit in equity to subject the lands to payment of the so-called judgment, there was personal service of notice or process upon the appellant, Frederick Wehrman, in the State of Wisconsin. Wehrman, by his answer, denies that any such service was made upon him. (Record p. 50.)

Having secured this adjudication, which did not attempt to decree that the judgment in the attachment suit was valid, the creditors of Adolph Wehrman thereupon issued a general execution upon their judgment at law in *personam*, and on such general execution attempted to sell the lands in controversy. For this execution and return thereon, see Record pp. 27, 28, Exhibit 5.

It is shown, without dispute, that the lands were attempted to be sold on this general execution in 1862, a sheriff's deed given thereunder, and Conklin, the appellee, complainant in this suit in equity in the court below, holds whatever title passed by virtue of this sheriff's sale. Such is one branch of his alleged title to the lands in controversy.

In December, 1860, the lands were sold at tax sale to one C. C. Orr, who received a tax deed June 28, 1866, and recorded the same July 7, 1866. (Record pp. 29 to 33, Exhibit J. And copy of same deed, Record pp. 101 to 106.)

It is shown without controversy that the appellee, T. B. Conklin, has also, by sundry *mesne* conveyances, acquired all title which passed to C. C. Orr under this tax deed.

As to this tax deed, it will be observed that the sale was for the taxes of 1858 and 1859, and it is charged by the bill and admitted by the answer, that O'Brien County, where the lands are situated, was attached to Woodbury County by act of the legislature of Iowa, for revenue, election and judicial purposes, and so remained attached to Woodbury County until February 6, 1860, when it was organized as an independent county and has so remained ever since. (Record p. 2 Bill, and p. 42 Answer.)

The taxes on the lands for 1858 and 1859 were, therefore, payable by law to the treasurer of Woodbury County, whereas, the tax deed shows that the treasurer of O'Brien County attempted to sell the lands for taxes, and to give a tax deed.

In aid of this illegal and void proceeding, it is charged by the bill that Clay County was also attached to Woodbury County for revenue purposes, and that Clay County, by certain proceedings in the courts (Record pp. 97 and 99), established its right to have the taxes for these years certified to it for collection; that thereupon Woodbury County conceded that the same rule ought to be applied to O'Brien County, and furnished O'Brien County with a certified copy of the tax records for 1858 and 1859, relating to O'Brien County, upon which the treasurer of the last named county proceeded to make the tax sale and execute the tax deed already referred to. (Record pp. 9, 10.)

These allegations relative to the O'Brien County taxes and tax list are not admitted by the answer. Nor is there any evidence to sustain them, except that Woodbury County paid over to O'Brien County in 1860 some of the taxes which it had collected up to that time. (Record p. 100.)

There is, hence, no evidence in the record of the slightest authority for the treasurer of O'Brien County to sell the lands in controversy for taxes, and the tax sale and deed, appellant insists, are absolutely void.

However, these are the two sources of Conklin's title.

1. Under the attachment suit.
2. Under the tax deed.

If he has title from either of these sources, it is a legal title and available at law, as well as in equity.

It will be seen from the facts already stated, that the conflict between appellant and appellant is as to who holds the legal title to the lands in controversy. This conflict should have been settled in the action at law brought by the appellant to recover possession of the lands. So far, it is submitted, there is no semblance of jurisdiction in a court of equity to attempt to substitute its jurisdiction for that of a court of law in settling this conflict as to a strictly legal title.

In order to give a semblance of jurisdiction in equity, Conklin, the appellee, sets up in his bill a claim of laches on the part of Wehrman in asserting his legal title to the land in controversy.

Also, it is claimed by the bill that Wehrman's course of conduct in failing to pay taxes on the lands, and in not more actively asserting his title against a void attachment proceeding and tax deed, amounted to an abandonment of the land, and an equitable estoppel which barred him from asserting his title in his suit in ejectment.

Wehrman, by his answer, denies all laches, and all grounds of equitable estoppel, and asserts his title in this suit, as in his ejectment suit, which he charges has been at all times of record in O'Brien County, and which he asserts gave him seizin and possession of the lands until Conklin and wife wrongfully entered into the possession thereof under their pretended claim of title.

At all stages of this suit the defendant and appellant herein has denied the jurisdiction of a court of equity to try or determine the legal title to the lands in controversy. He raised the jurisdiction of the court by demurrer to the bill. (Record pp. 34, 36.)

This demurrer was overruled after argument. (Record p. 129.)

In his answer he still denies the jurisdiction of a court of equity, and insists that Conklin shows no title of equitable relief. (Record p. 60.)

The question of jurisdiction, therefore, arises at the very threshold of the argument on this appeal.

ASSIGNMENT OF ERRORS.

Appellant says there is manifest error upon the face of the record, in this:

1. The court below erred in holding that the bill makes a case cognizable in equity, and erred in not dismissing the bill upon the ground that complainant below had a plain, speedy and adequate remedy at law.

2. The said court erred in holding that a court of equity has jurisdiction upon the facts disclosed by the bill to restrain and enjoin the prosecution of appellant's action at law to recover the possession of the real estate in controversy.

3. The said court erred in holding and finding that appellant is not the real owner of the real estate in controversy.

4. The said court erred in holding and finding that appellant is estopped fron asserting his title to the real estate in controversy against complainants in the court below and appellees in this court.

5. The said court erred in holding and finding that the transfer of the land in controversy from Adolph Wehrman to appellant was without consideration and fraudulant, and that appellant was in fact never the real owner of the lands.

6. The said court erred in holding and finding that "for more than twenty-five years Frederick Wehrman (appellant) remained wholly silent, knowing that by his silence he must of necessity be misleading others, to their injury."

7. The said court erred in holding and finding that appellant knew that his title and the lands in controversy were attached in the case of Greeley, Gale & Company against Adolph Wehrman.

8. The said court erred in holding and finding that the decree against appellant in the suit brought in the state court to subject the lands in controversy to the attachment and judgment against Adolph Wehrman, validated such attachment and judgment, and erred in holding that appellant's title to the lands in controversy was divested or affected by the sale under such attachment and judgment, or by the decree attempting to subject the lands to sale thereunder, as aforesaid.

9. The said court erred in holding and finding that appellant's title to the lands in controversy was divested by the sheriff's sale under the attachment and judgment against Adolph Wehrman.

10. The said court erred in refusing to find and adjudge that the attachment proceedings against Adolph Wehrman were void and that no title to the lands in controversy passed by the sheriff's sale thereunder.

11. The said court erred in failing to find and adjudge that the attachment in the suit against Adolph Wehrman was void, for the reason that the writ of attachment was not under the seal of the court out of which the same was issued.

12. The said court erred in failing and refusing to find and adjudge that the judgment against Adolph Wehrman in the attachment proceedings was wholly null, void and of no effect.

13. The said court erred in failing and refusing to find and adjudge that the sale of the lands in controversy on general execution in the attachment suit against Adolph Wehrman was wholly null, void and of no effect.

14. The said court erred in failing and refusing to find and adjudge that the tax deed to C. C. Orr under which appellee Conklin claims title, was wholly null, void and of no effect.

15. The said court erred in adjudging and decreeing that all adverse claims of appellant to the lands in controversy were invalid and groundless.

16. The said court erred in finding and decreeing that appellees were the true and lawful owners of the lands in controversy and in quieting their title thereto against all claims and demands of appellant.

17. The said court erred in enjoining appellant from setting up his claim of title to the lands in controversy, and in enjoining him from prosecuting his action at law for the recovery of the possession of the lands in controversy.

18. The said court erred in entering judgment and decree in favor of appellees and against appellant for the lands in controversy.

19. The said court erred in failing and refusing to dismiss appellees' bill.

20. The said court erred in maintaining jurisdiction in equity to award appellees any relief upon the facts set up in their bill and disclosed by the pleadings and proofs.

POINTS AND AUTHORITIES.

I.

NO JURISDICTION IN EQUITY.

The appellant, Wehrman, brought his action at law to recover possession of the lands in controversy. He claims by a strictly legal

title. Conklin claims by a strictly legal title. Appellant was entitled to a trial by jury to determine the validity of his title and that of Conklin. Equity has no jurisdiction to deprive him of this right.

It has been decided by this court that under constitutional and statutory safeguards equity has no jurisdiction to pass upon legal titles in possessory actions for real estate. Ejectment bills cannot be maintained in such cases. Thus it is said:

"It is the universal practice of courts of equity to dismiss a bill, if grounded upon a merely legal title. In such case *the adverse party* has a constitutional right to a trial by jury. * * * In the present case the bill seeks to enforce a merely legal title and an action in ejectment is an adequate remedy."

In that case the objection not having been raised by demurrer, it was held that it was:

"The duty of the court *sua sponte* to recognize and give it effect."

Lewis vs. Cocks, 23 Wallace, 466.

In another case this court said:

"This case is, therefore, an ejectment bill brought on an equitable title. * * Their (the defendants') possession is good against all the world, except the true owner. As the bill asserts no equity against them, they have the right to stand on their possession until compelled to yield to the true title, *and to demand a trial by jury of the question whether the plaintiff has the true title.* The plaintiff cannot deprive them of that right by neglecting to acquire the legal title, and upon the ground of the equitable title, ask the aid of a court of equity. She can turn the defendants out of posession, only upon the strength of the legal title which she must have acquired. *Having done this, a court of law is the proper forum in which to bring her suit.*"

Fussell vs. Gregg, 113 U. S. 533.

And in another case it was said:

"The fatal objection to the suit is that it is in fact an attempt by the party claiming under the legal title to use a bill in equity in the nature of a bill of interpleader, as an action in ejectment. The record makes this apparent. * * * *It is clear that an action in ejectment would have afforded appellee a plain, and adequate remedy.*"

Killian vs. Ebbinghaus, 110 U. S. 568.

And in another case:

"The bill in this case is in substance and legal effect, an ejectment bill. *The title appears by the bill to be merely legal;* the evidence to support it appears from documents accessible to either party, and no particular circumstances are stated, showing the necessity of the courts interfering, either for preventing suits, or other vexation, or for preventing an injustice irremediable at law."

And this court declared in that case that "the plaintiff must proceed at law, *because the defendant* has a constitutional right to a trial by jury."

It was also said:

"Nor can a court retain a bill under the impression that a court of chancery is better adapted for the adjustment of the account for rents, profits and improvements. * * * When a party has a right to a possession which he can enforce at law,

his right to the rents and profits is also a legal right, and must be enforced in the same jurisdiction."

And it was also said, citing authorities:

"In Welby vs. Duke of Rutland (6 Bro. P. C. Cas. 575) it is stated that *the general practice of courts of equity, in not entertaining suits for establishing legal titles, is founded upon clear reasons;* and the departing from that practice, where there is no necessity for so doing, would be subversive of the legal and constitutional distinctions between the different jurisdictions of law and equity; and though the admission of a party in a suit is conclusive as to matters of fact, or may deprive him of the benefit of a privilege which, if insisted on, would exempt him from the jurisdiction of the court, *yet no admission of parties can change the law, or give jurisdiction to a court in a cause of which it hath no jurisdiction.* * * * This court has denied relief in cases in equity where the remedy at law has been plain, adequate and complete, though the question was not raised by the defendants in their pleadings, nor suggested by the counsel in their arguments."

Citing authorities.

Hipp vs. Babin, 19 Howard, 277.

To the same effect are the cases of Parker vs. Manuf'g Co., 2 Black, 545.

Grand Chute vs. Winegar, 15 Wallace, 373.

These authorities were under consideration and reviewed in a later case, where it was said:

"It would be difficult and perhaps impossible, to state any general rule which would determine, in all cases, what should be deemed a suit in equity as distinguished from an action at law, for particular elements may enter into consideration which would take the matter from one court to the other; but this may be said, that where an action is simply for the recovery and possession of specific, real or personal property, or for the recovery of a money judgment, the action is one at law. An action for the recovery of real property, including damages for withholding it, has always been of that class. The right which, in this case, the plaintiff wishes to assert is his title to certain real property; the remedy which he wishes to obtain is its possession and enjoyment; and in a contest over the title *both parties have a constitutional right to call for a jury.*"

Whitehead vs. Shattuck, 138 U. S. 151.

It will be observed that these decisions proceed upon the ground that *both* parties have a constitutional right to trial by jury. The party out of posession, who brings his action at law to eject his adversary and try the question of legal title to the real estate, is as much entitled to the right of trial by jury as the party in possession, who also claims under a legal title.

Both parties to this controversy claim that they hold the legal title to the land. If Conklin holds such legal title by virtue of the sheriff's deed or his tax deed, under which he claims, he has an adequate and complete remedy at law, by asserting and maintaining such legal title in the action at law brought against him by Wehrman.

If, however, the pretended equitable estoppel which he sets up, is requisite to the establishment of his title, or right to possession of

the land, *he can prove and establish that equitable estoppel as a defense in the action at law, as well as he can assert it as a foundation for his suit in equity.* Such is the established doctrine of this court.

In the leading case on this question, where an equitable estoppel was pleaded and proved as a defense at law, in an action in ejectment, this court said:

"We think the facts disclosed in the record, make a complete estoppel *in pais*. But it is said, this objection to the plaintiff's claim is not available at law, and must be set up in equity. This is certainly not the common law."

And then after a discussion of the authorities, this court adds:

"This subject has been carefully examined in Bigelow on Estoppel pp. 533, 537. The learned author comes to no final conclusion whether in cases like this the defence may be at law, or whether a resort to equity is necessary. *The former is our view. Whether the title passed or not, the fact that the plaintiff was not entitled to possession of the premises was fatal to the action.*

Dickerson vs. Colgrove, 100 U. S. 588.

This doctrine was re-affirmed in a subsequent case, also an action in ejectment, in which this court said:

"This question in a different form was examined in Dickerson vs. Colgrove, 100 U. S., 578. That was an action of ejectment, and *the defence, based upon equitable estoppel, was adjudged to be sufficient.* We there held that the action involved both the right of possession and the right of property, and that as the facts developed showed that the plaintiff was not in equity and conscience entitled to disturb the possession of the defendants, there was no reason why the latter might not, under the circumstances disclosed, rely upon the doctrine of equitable estoppel to protect their possession.

"Applying these principles to the case in hand, it is clear, upon the facts recited in the first bill of exceptions, and which the jury found to have been established, that the plaintiff *is estopped* from disturbing the possession of the defendants."

Kirk vs. Hamilton, 102 U. S., 78.

And in a still later case, also an action in ejectment, this court sustained an equitable estoppel as a defence to the action, saying of plaintiff in such suit:

"But on the contrary he stood by and allowed the property to be sold, *saw the sheriff's deed executed for it*, and never attempted to redeem. * * * The time to have asserted any rights that he possessed under and by virtue of the stipulation incorporated in the mortgage, was limited by the terms of that instrument. And by failing to assert them, within that time, allowing the sale to go on, and that time to elapse, *he and his assigns should be estopped* from setting up any claim to the property in question."

Bacon vs. Ins. Co., 131 U. S., 264.

So far as any question of equitable estoppel is concerned, therefore, Conklin had an adequate and complete remedy at law, by asserting and proving such estoppel as a defence to the action in ejectment.

It is also settled law that the equitable jurisdiction of Federal Courts can be neither enlarged nor diminished by state legislation. Such was the decision of this court in a case cited supra, where the

statutes of Iowa authorized a suit in equity on a legal title against a party in the possession of real estate.

Whitehead vs. Shattuck, 138 U. S., 151.

And in a very recent case it was held by this court in an opinion by Mr. Justice Brewer:

"It is well settled that the jurisdiction of the Federal Courts sitting as courts of equity, is neither enlarged nor diminished by state legislation. Though by it all differences in forms of action be abolished; though all remedies be administered in a single action at law; and so far at least as form is concerned all distinction between equity and law be ended, yet the jurisdiction of the Federal Court sitting as a court of equity, remains unchanged."

Mississippi Mills vs. Cohn, 150 U. S., 204.

To the same effect see *Payne vs. Hook*, 7 Wallace, 430.

McConahy vs. Wright, 121 U. S., 205.
Scott vs. Neely, 140 U. S., 106.

And so in a case where a state statute authorized simple contract creditors to proceed by bill in equity against the rights, credits and all property of a debtor, it was held that this statute would not confer the like equitable jurisdiction upon the Federal Courts. The court said, opinion by Mr. Chief Justice Fuller:

"Doubtless new classes of cases may by legislative action be directed to be tried in chancery, but they must, when tested by the general principles of equity, be of an equitable character, or based on some recognized ground of equity interposition. This will be found to be true of the decisions in Holland vs. Challen, 110 U. S., 15; Whitehead vs. Shattuck, 138 U. S., 146, and like cases."

"The fact that section 1845 (Laws of Miss.) aims to create a lien by the filing of the bill does not affect the question, for in order to invoke equity interposition in the United States courts the lien must exist at the time the bill is filed and form its basis, and to allow a lien resulting from the issue of process to constitute such ground would be to permit state legislation to withdraw all actions at law from the one court to the other, and unite legal and equitable claims in the same action, which cannot be allowed in the practice of the courts of the United States, in which *the distinction between law and equity is matter of substance and not merely of form and procedure*. And as the ascertainment of the complainant's demand is by action at law, the fact that the chancery court has the power to summon a jury on occasion, cannot be regarded as the equivalent of the right of trial by jury secured by the Seventh Amendment."

Gates vs. Allen, 149 U. S. 458–9.

The same rule is held in Swan Land and Cattle Co. vs. Frank, 148, U. S. 612.

The reason for the rule is thus stated:

"So it has been often adjudged that whenever, respecting any right violated, a court of law is competent to render a judgment affording a plain, adequate, and complete remedy, the party aggrieved must seek his remedy in such court, not only *because the defendant has a constitutional right to a trial by jury*, but because of the prohibition of the act of congress to pursue his remedy in such cases in a court of equity. (Citing authorities.) *All actions which seek to recover specific property, real or personal*, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, *are*

legal actions, and can be brought in the Federal Courts, only on their law side. Demands of this kind do not lose their character as claims cognizable in the courts of the United States *only on their law side*, because in some state courts by virtue of state legislation, equitable relief in aid of the demand at law, may be sought in the same action. Such blending of remedies is not permissable in the courts of the United States."

Scott vs. Neely, 140 U. S. 110.

Now for precisely the reason given in this last authority "because the defendant (in this equity suit) has a constitutional right to a trial by jury" in his action at law, to recover the possession of the real estate, it is insisted that there is no jurisdiction in a court of equity to enjoin him from proceeding with his law action, and thus deprive him of that right.

As has already been seen, the complainants in this suit in equity being appellees herein, can avail themselves of everything they set up in their bill, as a defense to appellant's action at law. This being so, the doctrine that they cannot maintain their suit in equity and enjoin the legal proceedings is well settled. It is thus stated by an elementary writer :

"*The most frequent ground for refusing relief by injunction against a suit at law, is that the defense urged may be used in the action at law itself, without resort to equity. And it may be laid down as a general rule that legal proceedings will not be enjoined on grounds of which the person agrieved may avail himself in defense of the action at law.* (Citing numerous authorities.) In illustration of the rule where complainant files a bill to set aside certain securities as void, and is afterwards sued at law upon the securities having a good defense to the action at law, he will not be allowed to enjoin the prosecution of such suit, until after he has obtained a decree in equity. (Citing New York Co. vs. American Co., 11 Paige, 384.) Nor in such case will the neglect of the defendant in the chancery suit to object to the jurisdiction of the court, entitle complainant to a preliminary injunction restraining the suit at law. (Citing same authority.) So proceedings at law will not be enjoined on the ground of want of jurisdiction in the court in which the proceedings are instituted, since such want of jurisdiction can be relied upon in defense of the action at law. (Citing Gibson vs. Moore, 22 Texas, 611.) And equity will not enjoin proceedings in another court of competent jurisdiction, where adequate relief may be had on appeal from the order of such court."

I High on Injunctions, 2 Ed., Sec. 89.

It is true that multiplicity of actions at law touching the same real estate may be enjoined.

Lambert vs. Lambert, 5 Ir. Eq., 339.

But where the object of the bill is to procure a consolidation of actions at law, equity will not interfere, since a court of law is clearly competent to administer the relief desired.

Peters vs. Prevost, 1 Paine C. C., 64.

In a case where prosecution of an action in ejectment was enjoined, and as to a portion of the land in controversy the title could properly be determined in the action at law, it was held that as to

such part of the lands the injunction should be dissolved. The court said, opinion by Zabriskie Ch.:

"Such questions can be tried in an action of ejectment, and the Supreme Court is not only competent, but peculiarly the appropriate tribunal for determining them. And, if they arose incidentally in a suit in this court, it would be proper to refer them to a court of law for its determination. That the complainant, by pleading unadvisedly in the ejectment suit, may run the hazard of being beaten in that suit and paying the costs, is not a sufficient ground for the interference of a court of equity, in which it must succeed or fail upon the same principle as at law, and in which the costs may be still greater. I see no question that can arise as to these two strips of land, which cannot be as well determined in courts of law as here. As to them, the injunction must be dissolved absolutely."

Camden & Amboy Ry. Co. vs. Stewart, 18 N. J. Eq., 494.

Where a title is being tested by an action of ejectment in a court of common law, having jurisdiction, the suit will not be enjoined, when the different courts have concurrent jurisdiction. The right to determine the controversy belongs to that tribunal to which resort is first had.

Stockton vs. Williams, 1 Doug. (Mich.,) 546.

Action of ejectment will not be restrained, if brought by the owner of land, after attaining majority, who, while an infant, contracted for its sale, and gave a bond for conveyance, and after coming of age refuses to ratify the sale, even though the purchase money has been paid.

Brawner vs. Franklin, 4 Gill., 463.

The mere staleness of a claim of title, or the fact that it is barred by the statute of limitations, constitutes no sufficient ground for restraining proceedings in ejectment, since such ground may be relied upon in defense of the action at law.

Horner vs. Jobs, 13 N. J. Eq., 19.

Where it is sought to enjoin an action of forcible entry and it is apparent that complainants in the injunction suit have a full and complete defense at law, equity will apply the general rule, denying equitable relief where an adequate remedy exists at law, and will refuse to interfere.

Womack vs. Powers, 50 Ala., 5.

A suit brought by the heirs at law to recover possession of land, will not be enjoined at the instance of a devisee, under a lost will, which has been insufficiently proven, the proper remedy being for the complainant to retrace his steps and correct his errors in the probate court where they were made.

Clark vs. Clark, 7 R. I., 45.

A bill to establish a legal title and restrain proceedings at law will not be entertained, where nothing prevents a defense in the action at law. The court said, speaking by Vroom, Ch.:

"The only question between the parties, so far as I can discover, is a legal question, and properly triable in the court where it now is. *It is a general rule that when a bill is brought to establish a legal title, and for a perpetual injunction, it will be dismissed.* 1 Bro. P. C., 39. *The trial must be at law.* There are cases in which this court will interfere by injunction, *but it must be after repeated trials at law* and for the sake of preventing useless litigation. It does not alter the case that the suit is brought by the receivers. They stand in the place of the company, the grantors, and will be bound by their lawful acts. And, if they intend to rely upon the ground of fraud in the conveyance, and choose to go into a court of law to sustain it and establish their own title, this court will not interfere to restrain them."

De Groot vs. Receivers, Etc., 3 N. J. Eq., 199.

Under these authorities, it is submitted that there is no ground upon which jurisdiction can be maintained in this suit, to restrain appellant from proceeding with his action of ejectment in the court below.

II.

WRIT OF ATTACHMENT VOID.

By article 5 of the constitution of Iowa, section 1, it is provided:

"The judicial power shall be vested in a Supreme Court, District Courts, and such inferior courts as the General Assembly may from time to time establish."

And by section 4 of the same article it is provided:

"A District Court shall be a court of law and equity and have jurisdiction in all civil and criminal matters arising in their respective districts in such manner as shall be prescribed by law."

The following sections of the revision of 1860, Statutes of Iowa, were in force at the time of the attachment proceedings:

Section 2663: "The several District Courts shall exercise general original jurisdiction, both civil and criminal, and as well in chancery as at common law, where not otherwise provided by law. They shall also have a general supervision over all inferior courts to prevent and correct abuses, where no other remedy is provided."

Section 2664: "The clerk of each District Court shall keep a record of the proceedings of the court under the direction of the judge, and shall from time to time read over all entries therein in open court, which, when correct, shall be signed by the judge."

Section 661: "The secretary (of state) shall procure, at the expense of the state, for each county when organized, a seal for the District Court, of the same description with that heretofore adopted."

Section 342: "The clerk of the District Court is ex officio the clerk of the county court and the register of probate."

Section 343: "He shall keep his office at the county seat; shall attend the sessions of the District and County Courts, himself or by deputy; keep the records, papers and seal of the District Court; and keep the record of the proceedings of each of those courts in separate sets of books, as may belong to his office, as required by law, under the direction of the judges of those courts severally."

Section 2682: "*All process issued by the clerk of the Supreme or any District Court* shall bear date of the day on which it is issued, be tested in the name of the clerk who issued the same, *and be under the seal of the court.*"

ATTACHMENTS.

Section 3174: "The petition which asks an attachment must in all cases be sworn to. It must state:

1. That the defendant is a foreign corporation, or acting as such, or;
2. That he is a non-resident of the state." * * *

Section 3185: "*The clerk shall issue a writ of attachment* directing the sheriff of the county therein named, to attach the property of the defendant to the requisite amount therein stated."

Section 3186: "The sheriff shall in all cases attach the amount of property directed, if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable."

Section 3194: "Stock or interest owned by the defendant in any company, and also debts due him, or property of his held by third persons may be attached, and the mode of attachment must be as follows:

1. By giving the defendant in the action, if found within the county, and also the person occupying or in the possession of the property, if it be in the hands of a third person, notice of such attachment." * * *

Section 3215: "Property attached otherwise than by garnishment is bound thereby from the time of the attachment only."

Section 3224: "The sheriff shall return upon every writ of attachment what he has done, under it. The return must show the property attached, the time it was attached and the disposition made of it, by a full and particular inventory. Also the appraisement above contemplated, when such has been made. Where garnishees are summoned their names, and the time each was summoned must be stated, and where real property is attached sheriff shall describe it with sufficient certainty to identify it, and where he can do so, by a reference to the book and page where the deed under which the defendant holds his title, is recorded. He shall return with the writ, all bonds taken under it. Such return must be made immediately after he shall have attached sufficient property, or all that he can find, on the first day of the term on which the defendant is notified to appear."

Section 3232: "If judgment is rendered for the plaintiff, the court shall apply in satisfaction thereof:

1. The money arising from the sales of perishable property.
2. The proceeds of the debts and funds attached in the hands ot the garnishee. If these are not sufficient to satisfy the plaintiff's claim, the court shall order a sale by the sheriff of any other attached property which may be under his control."

Section 3233: "The court may from time to time make and enforce proper orders respecting the property sold and the application of the moneys collected."

SERVICE OF PROCESS.

Section 2831: "Service may be made by publication in either of the following cases. * * *

5. In actions brought against a non-resident of this state, or a foreign corporation having in this state property or debts owing to such defendant, sought to be taken by any of the provisional remedies or to be appropriated in any way."

Section 2835: "Actual personal service of the notice, either within or without the state, supersedes the necessity for publication."

In attachment proceedings of the character in controversy in this suit, where there is no personal jurisdiction and the proceeding is in *rem*, it is the levy of a valid writ of attachment which gives the court jurisdiction to proceed. As was said in a case decided by this court, opinion by Mr. Justice Miller:

"Now, in this class of cases on what does the jurisdiction of the court depend? It seems to us that the seizure of the property, or that which in this case is the same in effect, the levy of the writ of attachment on it, is the one essential requisite to jurisdiction, as it unquestionably is in proceedings purely in *rem*. Without this the court can proceed no further; with it the court can proceed to subject that property to the demand of the plaintiff. *If the writ of attachment is the lawful writ of the court issued in proper form, under the seal of the court*, and if it is by the proper officer levied upon property liable to attachment, when such writ is returned into court, the power of the court over the *res* is established."

Cooper vs. Reynolds, 10 Wallace, 317.

And service of notice without seizure of property will confer no jurisdiction whatever in a proceeding in *rem*.

Pennoyer vs. Neff, 95 U. S., 715.

The writ of attachment in the case at bar was void, because not under the seal of the court. The attachment and judgment were, therefore, absolutely void, and may be collaterally assailed. Such are the express decisions of the Supreme Court of Iowa. Thus it is said:

"Before the property of the defendant could be seized, it was indispensable that the plaintiff should obtain a writ. *A paper issued by the clerk in the form of a writ is no writ, unless it has impressed upon it the seal of the court from whence it issues*. Without this seal it is no more, for the purpose of a writ, than blank paper. Could it be amended? Not at all. For there is nothing to amend. It lacks the essential ingredient of a writ, and is not amendable. *It is the seal*—other things being right—which makes it a writ; gives it force, efficacy, and the like. The property which has been seized *upon this void paper* could not be held in custody upon a writ issued after it was attached, which would be the case, if the seal could be subsequently affixed. * * * This was not properly an amendment which was proposed. It was the creation of a writ. This could be done, but not so as to operate retrospectively upon any prior proceeding. With the seal it became for the first time a writ, and the party to make it available, should proceed upon it *de novo*."

Foss vs. Isett, 4 Green, (Iowa) 77.

In a subsequent case a writ which had been issued from the Circuit Court bore the seal of the District Court. An attempt was made to amend this writ, after the levy, by attaching the seal of the proper court. The Supreme Court of Iowa said:

"The writ of attachment issued from the Circuit Court and bore the seal of the District Court. The Circuit Court of each county is required to use its own seal, having on the face thereof the words 'Circuit Court', and the name of the county and state. Acts 12th Gen. Ass., ch. 86, par. 11.

"No authority is conferred upon the Circuit Court to use the seal of the District Court in authentication of writs issued from the Circuit Court.

"The seal of the District Court had no greater effect in giving validity to the writ of attachment in this case than the seal of a private corporation, or a notary public, or any other seal which the clerk had no authority to use would have had. The case stands then as though no seal had been used. A writ of attachment without a seal is invalid, and the defect is of such a nature that it cannot be cured by amendment. Foss vs. Isett, 4 G. Green, 76. The court erred, therefore, in overruling the motion to discharge the attachment, and in permitting the amendment of the writ by attaching the seal."

Shaffer vs. Sundwall, 33 Iowa, 583.

such part of the lands the injunction should be dissolved. The court said, opinion by Zabriskie Ch.:

"Such questions can be tried in an action of ejectment, and the Supreme Court is not only competent, but peculiarly the appropriate tribunal for determining them. And, if they arose incidentally in a suit in this court, it would be proper to refer them to a court of law for its determination. That the complainant, by pleading unadvisedly in the ejectment suit, may run the hazard of being beaten in that suit and paying the costs, is not a sufficient ground for the interference of a court of equity, in which it must succeed or fail upon the same principle as at law, and in which the costs may be still greater. I see no question that can arise as to these two strips of land, which cannot be as well determined in courts of law as here. As to them, the injunction must be dissolved absolutely."

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Where a title is being tested by an action of ejectment in a court of common law, having jurisdiction, the suit will not be enjoined, when the different courts have concurrent jurisdiction. The right to determine the controversy belongs to that tribunal to which resort is first had.

Stockton vs. Williams, 1 Doug. (Mich.,) 546.

Action of ejectment will not be restrained, if brought by the owner of land, after attaining majority, who, while an infant, contracted for its sale, and gave a bond for conveyance, and after coming of age refuses to ratify the sale, even though the purchase money has been paid.

Brawner vs. Franklin, 4 Gill., 463.

The mere staleness of a claim of title, or the fact that it is barred by the statute of limitations, constitutes no sufficient ground for restraining proceedings in ejectment, since such ground may be relied upon in defense of the action at law.

Horner vs. Jobs, 13 N. J. Eq., 19.

Where it is sought to enjoin an action of forcible entry and it is apparent that complainants in the injunction suit have a full and complete defense at law, equity will apply the general rule, denying equitable relief where an adequate remedy exists at law, and will refuse to interfere.

Womack vs. Powers, 50 Ala., 5.

A suit brought by the heirs at law to recover possession of land, will not be enjoined at the instance of a devisee, under a lost will, which has been insufficiently proven, the proper remedy being for the complainant to retrace his steps and correct his errors in the probate court where they were made.

Clark vs. Clark, 7 R. I., 45.

A bill to establish a legal title and restrain proceedings at law will not be entertained, where nothing prevents a defense in the action at law. The court said, speaking by Vroom, Ch.:

"The only question between the parties, so far as I can discover, is a legal question, and properly triable in the court where it now is. *It is a general rule that when a bill is brought to establish a legal title, and for a perpetual injunction, it will be dismissed.* 1 Bro. P. C., 39. *The trial must be at law.* There are cases in which this court will interfere by injunction, *but it must be after repeated trials at law* and for the sake of preventing useless litigation. It does not alter the case that the suit is brought by the receivers. They stand in the place of the company, the grantors, and will be bound by their lawful acts. And, if they intend to rely upon the ground of fraud in the conveyance, and choose to go into a court of law to sustain it and establish their own title, this court will not interfere to restrain them."

De Groot vs. Receivers, Etc., 3 N. J. Eq, 199.

Under these authorities, it is submitted that there is no ground upon which jurisdiction can be maintained in this suit, to restrain appellant from proceeding with his action of ejectment in the court below.

II.

WRIT OF ATTACHMENT VOID.

By article 5 of the constitution of Iowa, section 1, it is provided:

"The judicial power shall be vested in a Supreme Court, District Courts, and such inferior courts as the General Assembly may from time to time establish."

And by section 4 of the same article it is provided:

"A District Court shall be a court of law and equity and have jurisdiction in all civil and criminal matters arising in their respective districts in such manner as shall be prescribed by law."

The following sections of the revision of 1860, Statutes of Iowa, were in force at the time of the attachment proceedings:

Section 2663: "The several District Courts shall exercise general original jurisdiction, both civil and criminal, and as well in chancery as at common law, where not otherwise provided by law. They shall also have a general supervision over all inferior courts to prevent and correct abuses, where no other remedy is provided."

Section 2664: "The clerk of each District Court shall keep a record of the proceedings of the court under the direction of the judge, and shall from time to time read over all entries therein in open court, which, when correct, shall be signed by the judge."

Section 661: "The secretary (of state) shall procure, at the expense of the state, for each county when organized, a seal for the District Court, of the same description with that heretofore adopted."

Section 342: "The clerk of the District Court is ex officio the clerk of the county court and the register of probate."

Section 343: "He shall keep his office at the county seat; shall attend the sessions of the District and County Courts, himself or by deputy; keep the records, papers and seal of the District Court; and keep the record of the proceedings of each of those courts in separate sets of books, as may belong to his office, as required by law, under the direction of the judges of those courts severally."

Section 2682: "*All process issued by the clerk of the Supreme or any District Court* shall bear date of the day on which it is issued, be tested in the name of the clerk who issued the same, *and be under the seal of the court.*"

ATTACHMENTS.

Section 3174: "The petition which asks an attachment must in all cases be sworn to. It must state:

1. That the defendant is a foreign corporation, or acting as such, or;
2. That he is a non-resident of the state." * * *

Section 3185: "*The clerk shall issue a writ of attachment* directing the sheriff of the county therein named, to attach the property of the defendant to the requisite amount therein stated."

Section 3186: "The sheriff shall in all cases attach the amount of property directed, if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable."

Section 3194: "Stock or interest owned by the defendant in any company, and also debts due him, or property of his held by third persons may be attached, and the mode of attachment must be as follows:

1. By giving the defendant in the action, if found within the county, and also the person occupying or in the possession of the property, if it be in the hands of a third person, notice of such attachment." * * *

Section 3215: "Property attached otherwise than by garnishment is bound thereby from the time of the attachment only."

Section 3224: "The sheriff shall return upon every writ of attachment what he has done, under it. The return must show the property attached, the time it was attached and the disposition made of it, by a full and particular inventory. Also the appraisement above contemplated, when such has been made. Where garnishees are summoned their names, and the time each was summoned must be stated, and where real property is attached sheriff shall describe it with sufficient certainty to identify it, and where he can do so, by a reference to the book and page where the deed under which the defendant holds his title, is recorded. He shall return with the writ, all bonds taken under it. Such return must be made immediately after he shall have attached sufficient property, or all that he can find, on the first day of the term on which the defendant is notified to appear."

Section 3232: "If judgment is rendered for the plaintiff, the court shall apply in satisfaction thereof:

1. The money arising from the sales of perishable property.
2. The proceeds of the debts and funds attached in the hands ot the garnishee. If these are not sufficient to satisfy the plaintiff's claim, the court shall order a sale by the sheriff of any other attached property which may be under his control."

Section 3233: "The court may from time to time make and enforce proper orders respecting the property sold and the application of the moneys collected."

SERVICE OF PROCESS.

Section 2831: "Service may be made by publication in either of the following cases. * * *

5. In actions brought against a non-resident of this state, or a foreign corporation having in this state property or debts owing to such defendant, sought to be taken by any of the provisional remedies or to be appropriated in any way."

Section 2835: "Actual personal service of the notice, either within or without the state, supersedes the necessity for publication."

In attachment proceedings of the character in controversy in this suit, where there is no personal jurisdiction and the proceeding is in *rem*, it is the levy of a valid writ of attachment which gives the court jurisdiction to proceed. As was said in a case decided by this court, opinion by Mr. Justice Miller:

"Now, in this class of cases on what does the jurisdiction of the court depend? It seems to us that the seizure of the property, or that which in this case is the same in effect, the levy of the writ of attachment on it, is the one essential requisite to jurisdiction, as it unquestionably is in proceedings purely in *rem*. Without this the court can proceed no further; with it the court can proceed to subject that property to the demand of the plaintiff. *If the writ of attachment is the lawful writ of the court issued in proper form, under the seal of the court*, and if it is by the proper officer levied upon property liable to attachment, when such writ is returned into court, the power of the court over the *res* is established."

Cooper vs. Reynolds, 10 Wallace, 317.

And service of notice without seizure of property will confer no jurisdiction whatever in a proceeding in *rem*.

Pennoyer vs. Neff, 95 U. S., 715.

The writ of attachment in the case at bar was void, because not under the seal of the court. The attachment and judgment were, therefore, absolutely void, and may be collaterally assailed. Such are the express decisions of the Supreme Court of Iowa. Thus it is said:

"Before the property of the defendant could be seized, it was indispensable that the plaintiff should obtain a writ. *A paper issued by the clerk in the form of a writ is no writ, unless it has impressed upon it the seal of the court from whence it issues*. Without this seal it is no more, for the purpose of a writ, than blank paper. Could it be amended? Not at all. For there is nothing to amend. It lacks the essential ingredient of a writ, and is not amendable. *It is the seal*—other things being right—which makes it a writ; gives it force, efficacy, and the like. The property which has been seized *upon this void paper* could not be held in custody upon a writ issued after it was attached, which would be the case, if the seal could be subsequently affixed. * * * This was not properly an amendment which was proposed. It was the creation of a writ. This could be done, but not so as to operate retrospectively upon any prior proceeding. With the seal it became for the first time a writ, and the party to make it available, should proceed upon it *de novo*."

Foss vs. Isett, 4 Green, (Iowa) 77.

In a subsequent case a writ which had been issued from the Circuit Court bore the seal of the District Court. An attempt was made to amend this writ, after the levy, by attaching the seal of the proper court. The Supreme Court of Iowa said:

"The writ of attachment issued from the Circuit Court and bore the seal of the District Court. The Circuit Court of each county is required to use its own seal, having on the face thereof the words 'Circuit Court', and the name of the county and state. Acts 12th Gen. Ass., ch. 86, par. 11.

"No authority is conferred upon the Circuit Court to use the seal of the District Court in authentication of writs issued from the Circuit Court.

"The seal of the District Court had no greater effect in giving validity to the writ of attachment in this case than the seal of a private corporation, or a notary public, or any other seal which the clerk had no authority to use would have had. The case stands then as though no seal had been used. A writ of attachment without a seal is invalid, and the defect is of such a nature that it cannot be cured by amendment. Foss vs. Isett, 4 G. Green, 76. The court erred, therefore, in overruling the motion to discharge the attachment, and in permitting the amendment of the writ by attaching the seal."

Shaffer vs. Sundwall, 33 Iowa, 583.

In a case decided by this court, land was sold on execution with no seal attached. Ejectment was brought against the purchaser at sheriff's sale. This court held, without hesitation, that the writ and sale were void. It was said, opinion by Mr. Justice Miller:

"If the paper here called an order of sale is to be treated as a writ of execution or fieri facias issued to the sheriff, or as a process of any kind issued from the court, which the law required to be issued under the seal of the court, there can be no question that it was void, and conferred no authority upon the officer to sell the land.

"The authorities are uniform that all process issuing from a court which by law authenticates such process with its seal, is void if issued without a seal. Counsel for plaintiffs in error have not cited a single case to the contrary, nor have our own researches discovered one.

"We have decided in this court that a writ of error is void for want of a seal, though the clerk had returned the transcript in obedience to the writ. * * * That the ordinary writ of fieri facias is the authority of the sheriff to levy on property and sell it is undoubted, and needs no reference to authorities to support it, and if the supposed writ is void, then the levy and sale are void, and not merely voidable, because they are made without any authority on the part of the officer. * * *

"But if his power to sell depends upon a process and that process shows on its face that it is void, it can confer no authority and all his proceedings under it are simply void."

And after considering the statutes of Indiana and holding that the order of sale was required by statute to be under the seal of court, the learned justice added:

"It is, therefore, to all intents and purposes, an execution, and the statute expressly requires that it must issue under the seal of the court. Without the seal it is void. We cannot distinguish it from any other writ or process in this particular.

"It is equally clear that under the Indiana statute the sheriff could not sell without this order, certified under the seal of the court and placed in his hands. This is his authority, and if it is, for any reason, void his acts, purporting to be done under it, are also void."

Ins. Co. vs. Hallock, 6 Wallace, 556.

The following authorities hold that in the absence of the seal of court the writ is void, and whatever an officer does thereunder is unjustifiable and void.

Boal vs. King, 6 Ohio, 11.
Swett vs. Patrick, 2 Fairfield, 177.
Hutchins vs. Edson, 1 N. H. 139.
Schacksford vs. McRae, 3 Hawks, 266.
Seawell vs. Bank of Cape Fear, 3 Dev., 279.
Taylor vs. Taylor, 83 N. C., 116.
Roseman vs. Miller, 84 Ill., 297.

So it is well settled that an execution issued on a void judgment and an execution issued without any judgment are alike invalid. For neither has any legal foundation on which to rest.

Albee vs. Ward, 8 Mass., 79.
Nabors vs. Cocke, 24 Miss., 44.
Fithian vs. Monks, 43 Mo., 502.
Gelston vs. Thompson, 29 Maryland, 595.

Roberts vs. Stowers, 7 Bush., 295.
Morris vs. Hogle, 37 Ill., 150.
Johnson vs. Baker, 38 Ill., 98.
Chase vs. Dana, 44 Ill.. 262.

An execution in *personam* cannot issue on a judgment in *rem*.

Chapman vs. Lemon, 11 How. Practice, 239.

And it is settled that if a writ of execution issue after the death of the judgment defendant and before the judgment has been revived by *scire facias*, such execution is void, and the sheriff's sale and deed of lands thereunder are also absolutely void and pass no title.

In one case this court said:

"We are satisfied that, according to the settled principles of the common law, and which are founded upon the most cogent and satisfactory grounds, the execution having issued and bearing teste in this case, after the death of one of the defendants it was irregular and void; and that the sale and conveyance of the real estate of the deceased under it to the plaintiff was a nullity."

Erwin's Lessee vs. Dundas, 4 How., 80.

And the rule was held by this court to be the same as to a judgment in attachment proceedings against a non-resident. The court said:

"The writ of *fieri facias* on which Mitchell rests his title, was tested after the death of St. Maxent; and, according to a familiar rule of the common law, it was therefore void. * * *

"But it is insisted that the rules of the common law only attach to suits prosecuted in the ordinary way, and do not apply where the proceedings are commenced by seizing property under a writ of attachment. This is a novel view, for the law of attachment, being in derogation of the common law, courts are not inclined to extend its provisions beyond the requirements of the statute authorizing it."

And the writ was accordingly held void, together with the sheriff's deed thereunder, in a suit in ejectment where the proceedings were collaterally assailed.

Mitchell vs. St. Maxent's Lessee, 4 Wall., 242.

The Supreme Court of Iowa has held precisely the same thing in a foreign attachment proceeding and judgment, saying of the argument by which it was attempted to sustain the sheriff's sale:

"But this view omits the consideration of the fact that an attachment is not in fact a seizure of the real property upon which it is levied, so as to transfer its possession or custody. It operates simply to create a lien to which the judgment relates *and which is enforced by special execution*. The argument is, therefore, based upon a mistaken assumption as to the effect of an attachment, and must fall. The very point made by counsel was decided adversely to their view in Mitchell vs. St. Maxent's Lesse, *supra*. It is there held that an execution cannot issue in an attachment case after the death of the defendant, and a sale made upon a writ so issued was void. We conclude, therefore, that the district court ruled correctly in holding that defendants acquired no title to the land by virtue of the execution sale, and the sheriff's deed executed thereon."

Welch vs. Batten, 47 Iowa, 148.

In a late case the same rule is maintained by the Supreme Court of Iowa.

Boyle vs. Maroney. 73 Iowa, 75.

Numerous authorities maintain the like doctrine that a sale on execution issued after the death of the judgment debtor, without a revivor of the judgment, is absolutely void, passes no title, and may be assailed collaterally wherever the question arises.

Massie's Heirs vs. Long, 2 O., 288.
Samuel vs. Zachery, 4 Ind., 377.
Cartney vs. Reed, 5 O., 221.
Houston vs. Childers, 24 La. Ann., 274.
Beach vs. Dennis, 47 Ala., 262.
Lucas vs. Price, 4 Ala., 679.
Collier vs. Windham, 27 Ala., 291.
Gwynn vs. Latimer, 4 Yerg., 22.
Whitehead vs. Cummins, 2 Cart., 58.
State vs. Michaels, 8 Blackf., 436.
Hildreth vs. Thompson, 16 Mass., 191.
Pickett vs. Hartsock, 15 Ill., 279.
Wallace vs. Swinton, 64 N. Y., 188.
Meyer vs. Hearst, 75 Ala., 390.
Smith vs. Reed, 52 Cal., 345.
Cunningham vs. Burk, 45 Ark., 267.
Williams vs. Weaver, 94 N. C., 134.

The effect of these various decisions is well stated by an elementary authority:

"A void judgment, order, or decree in whatever tribunal it may be entered is in legal effect, nothing. All acts performed under it, and all claims flowing out of it, are void. Hence, a sale based on such a judgment has no foundation in law. It must certainly fall. Judicial proceedings are void when the court wherein they take place is acting without jurisdiction. * * * It must be constantly remembered that jurisdiction is indispensible to the validity of all judicial proceedings. That if the proceedings taken to obtain jurisdiction are radically defective, all subsequent steps are invalid, however regular they may be."

Freeman on Void Judicial Sales, Sec. 2, and authorities there cited.
Freeman on Judgments, Sec. 117.

And if a sale be void, because the court did not have jurisdiction to order it, an order confirming it is necessarily inoperative.

"The sale being void there was no subject-matter upon which the order of confirmation could act. If the court had no jurisdiction to order the sale, it had none to confirm it. Where there is no power to render a judgment, or to make an order, there can be none to confirm or execute it."

Minn. Co. vs. St. Paul Co., 2 Wall., 609.
Pike vs. Wassall, 94 U. S., 711.

Townsend vs. Tallant, 33 Cal., 54.
Scriver's Lessee vs. Lynn, 2 How., 57.
Hawkins vs. Hawkins, 28 Ind., 70.

In one of the above cases this court said:

"No court, however great may be its dignity, can arrogate to itself the power of disposing of real estate without the forms of law. *It must obtain jurisdiction of the thing in a legal mode.* A decree without notice would be treated as a nullity, and so must a sale of land be treated, which has been made without an order or decree of the court, though it may have ratified the sale."

Scriver's Lessee vs. Lynn, 2 How. Supra.

In an administrator's sale where a bond was not given as required by law, that eminent jurist, Judge Story, held the whole proceeding, including the sale, to be absolutely void and refused to base any relief in equity thereon. In his decision he said:

"Upon this case, coming out on the trial of the action at law (a writ of entry), the court held that the giving of the bond was, by law, an essential prerequisite to the sale; and, it not having been complied with, the sale was consequently invalid and passed no title to the purchaser. It is now argued that however correct this doctrine may be at law, yet in a court of equity the omission to give the bond within a stipulated time, ought not to be held a fatal defect, but it should be treated as a mistake, or inadvertance, or accident properly remediable in a court of equity. *We do not think so.* * * * Now it is a well settled doctrine that, although courts of equity may relieve against the defective execution of a power created by a party, *yet they cannot relieve against the defective execution of a power created by law, or dispense with any of the formalities required thereby for its due execution;* for, otherwise the whole policy of the legislative enactments might be overturned. There may, perhaps, be exceptions to this rule, but if there be the present case does not present any circumstances which ought to take it out of the general rule. Therfore, it seems to us that the non-compliance with the statute prerequisites in the present case, is equally fatal in equity as it is in law."

Bright vs. Boyd, 1 Story C. C., 486.

In another similar case it was said:

"But the truth is, the purchaser at these statutory sales gets no imperfect equitable title which may be perfected in chancery. He gets the whole title which the infant had, or he gets no title whatever."

Young vs. Dowling, 15 Ill., 485.

Nor can sales under void judgments and executions be validated by legislative curative acts. In an Illinois decision it was said by Caton, C. J.:

"If it was competent for the legislature to make a void proceeding valid, then it has been done in this case. Upon this question we cannot for a moment doubt or hesitate. They can no more impart a binding efficacy to a void proceeding than they can take one man's property from him and give it to another. Indeed, to do the one is to accomplish the other. * * * This, it will not be pretended, they could do directly, and they had no more authority to do it indirectly, by making proceedings binding upon them which were void at law."

McDaniel vs. Correll, 19 Ill., 228.

Where a decree foreclosing and establishing a tax deed was

void, because rendered upon insufficient service by publication, it was held that a subsequent act of the legislature could not validate the judgment or give title under it. The court said, of the curative act:

"If it was competent for the legislature to make this declaration, then it was competent for it to have declared that to be a judgment, which was before no judgment, and binding on the party against whom formally rendered, when before he was not bound at all; for such is the direct result. It is a proposition, not to be discussed at this day, that the legislature has no such power."

Nelson vs. Rountree, 23 Wis., 370.

And where the legislature of Pennsylvania attempted to validate proceedings in partition, which were void, because one of the defendants had no notice of their pendency, the Supreme Court of Pennsylvania said:

"The act itself was unconstitutional and void, as an infringement of the inhibition contained in the ninth section of the Declaration of Rights, Article IX of the constitution, that no person can be deprived of his life, liberty, and property, unless by the judgment of his peers, or the law of the land. What is the act but a mere bold attempt to take the property of A and give it to B? It was not a case in which the mere irregularity of a judgment, or a formal defect in the acknowledgement of a deed, was cured, where the equity of the party is complete, and all that is wanting is legal form. * * * These abundantly sustain the position that an act of the legislature cannot take the property of one man and give it to another, and that when it has been attempted to be taken by a judicial proceeding, as a sheriff's sale, which is void for want of jurisdiction, it is not in the power of the legislature to infuse life into that which is dead—to give effect to a mere nullity."

Richards vs. Rote, 68 Pa. St., 255 and authorities there cited.

The Supreme Court of New Jersey determined, with respect to estates in remainder, that the judges of the courts of common pleas had no authority to order or approve a sale in partition.

Stevens vs. Enders, 1 Green, 271.

Afterwards the legislature undertook to validate all sales made in partition, notwithstanding the existence of estates in remainder or reversion, unless the proceedings had been reversed on certiorari, or writ of error, within three years after the partition sale. This act was unhesitatingly held void. The court said:

"If it has the effect intended, it takes this vested estate out of these remaindermen and converts it into money. The question whether the owner's land shall, without his assent, be turned into money, has always, at the common law and in this state, been deemed one addressed to the judicial discretion. The right to decide in such junctures has been always confided, in part, to courts of equity."

And it was held that the legislature could not validate the partition sales in question.

Maxwell vs. Goetschius, 40 N. J. Law, 383.

Where an execution sale in Pennsylvania was void, because made after the return day of the writ, and the legislature attempted

to validate such sale, the Supreme Court of the state held the act unconstitutional, saying:

"Is this act unconstitutional? The sale being made contrary to legislative enactment, and declared by this court utterly void, can the legislature validate such a sale to the injury of another party? In plain English, can they take one man's property and give it to another—property which is secured to him by the constitution and laws? * * * In this case, the purchaser bought in the face of a recent statute which he was bound to know and obey, and purchased with his eyes open. He had no moral claim to have the sale made good. The act of the legislature which covers this case is unconstitutional and void."

Dale vs. Medcalf, 9 Pa. St., 110.

There is no equity in upholding sales made on void judgments. It has been well said:

"In the first place everybody is conclusively presumed to be acquainted with the law. It cannot, therefore, be expected that a sale made in such a manner as to be inoperative under the then existing law, will realize a fair price. Many persons must be deterred from bidding because they know or suspect that the sale is invalid. *He who purchases must be taken to act with his eyes open, and as bidding for a mere chance, rather than for an unquestionable title. All this is equally true, whether the defect be that the judgment is void, or that the sale is invalid from some other vice.* He whose property is sacrificed against his will by being exposed to the hazard of a void sale, has, even in the broad rules of right and justice, rights as sacred as those of the speculating purchaser. *The latter is a mere volunteer risking his money in defiance of the law.* He is not imposed on in any manner, nor is there any contract between him and the owner of the property to urge by way of estoppel. But if an execution or judicial sale be void at law it is usually equally void in equity. The purchaser has no title which is recognized in any prevailing system of law. The judgment debtor is under no obligation which will warrant any court in compelling him to convey or surrender his property to the purchaser. Why should not those rights which confer a perfect title to property, both at law and in equity, be held to be vested rights?"

Freeman on Void Judicial Sales, Sec. 62.
And see *Pryor vs. Downey*, 50 Cal., 403.

III.

PROCEEDINGS SUBSEQUENT TO ATTACHMENT VOID.

1. Personal service of the original notice upon a non-resident defendant outside of the State of Iowa confers no jurisdiction to render judgment in *personam* against such defendant when he does not appear.

Darrance vs. Preston, 18 Iowa, 396.
Bates vs. C. & N.-W. R'y Co., 19 Iowa, 260.
Mooney vs. R'y Co. 60 Iowa, 346.
Weil vs. Lowenthal, 10 Iowa, 575.
Hakes vs. Shupe, 27 Iowa, 465.

And an action cannot be maintained upon a judgment rendered on service by publication, or on service upon the defendant in another state.

Melhop vs. Doane, 31 Iowa, 397.

And where a suit is commenced by attachment upon service by publication only, and no property is attached, the judgment is a nullity.

Judah vs. Stevenson, 10 Iowa, 493.
Cooper vs. Smith, 25 Iowa, 269.
Wells vs. Sequin, 14 Iowa, 143.

In order for the court, then, to have rendered a valid judgment in the attachment suit, it must have acquired jurisdiction in *rem* and must have maintained that jurisdiction throughout the proceedings.

The statute, revision of 1860, contains the following provisions as to

ORIGINAL NOTICE.

Section 2811: "Actions originating in the District Court are to be commenced by serving the defendant with the notice hereinafter described."

Section 2812: "Such notice must be signed by the plaintiff or his attorney, and must inform the defendant of the name of the plaintiff, and, that on or before a date therein named, a petition will be filed in the office of the clerk of the District Court of the county wherein suit is brought naming it, and stating generally the nature of the claim, or claims, if more than one, without the need of stating the facts constituting the cause thereof, (as for example, on account for a prommissory note, for work, for goods sold, for assault and battery, for slander, for the recovery of personal or real property, or in some other such general way,) and if the action is for money, how much is claimed—and that unless he appears thereto and defends, before noon of the second day of the term, at which said defendant is required by law to appear—naming it—or at such other time, as may be by general rule of such court prescribed, default will be entered against him, and judgment rendered thereon. If the defendant fails to appear, judgment shall not be rendered for a larger amount than the sum therein claimed and costs."

It will be observed that this process must cite the defendant to a term at which he "is required *by law* to appear—naming it."

In the attachment proceedings against Adolph Wehrman, it is shown by the bill (Record pp. 3 and 4; Answer, Record p. 45) that when notice was served on him no term of court had been fixed by law, or otherwise, to be held at the time at which Wehrman was cited by the original notice to appear, namely, the first Monday of June, 1861. (See original notice Exhibit D, Record p. 22.)

This original notice was served on Wehrman on the 25th day of January, 1861, and not until the 23rd day of March was such a term of court fixed, nor until the 23rd of April, 1861, thereafter, was there any record of such term. This being so, the notice served on Wehrman was of a non-existent term of court, was unauthorized by law, a nullity, and no notice whatever. For aught that appears, he may have employed counsel and made inquiries to ascertain, prior to the time when the term of court was fixed, whether any term was to be held at the time specified in the notice, and finding that no such term had been appointed, or fixed, he may have given the matter no further attention.

It is obvious that all such process is void, and the Supreme Court of Iowa has so determined in a case where personal service was had within the state. The court said:

"As the notice must be returnable at a term of the court, and the proceedings must be set for determination upon a term day, it is obvious that a notice returnable at a different time, and requiring appearance of the parties notified *at a time other than that prescribed by law, is not such a one as is contemplated by law. It is a notice in essential particulars, different from the lawful notice required. It is, then, a case not of defective notice, but of no notice at all.* The notice was not the notice required by the statute to be given We speak, not of the form of the notice, or of its service, *but the very substance of the notice failed to comply with the law.*"

The judgment in that case was accordingly held absolutely void, when collaterally assailed in an action of ejectment.

Haws vs. Clark, 37 Iowa, 356.

And a notice requiring the defendant to appear at a day before the term, does not confer jurisdiction upon the court to render judgment.

Boales vs. Shules, 29 Iowa, 507.

There was, then, in the attachment proceeding, no service of notice or process authorizing even a judgment in *rem*, if land had been attached in the proceeding.

2. It was certainly a grave irregularity to change the venue in a proceeding in *rem* to Woodbury county under the pretense that a jury could not be obtained in O'Brien county in an action where the defendant, Adolph Wehrman, was already in default. And in transmitting the papers and transcript there was no proper authentication of the record sent to Woodbury county for the reason that no seal of the District Court of O'Brien county was attached to the clerk's certificate. Treating these matters as mere irregularities however, the judgment attempted to be rendered in Woodbury county was void, because not rendered upon the cause of action set up in the attachment petition, nor mentioned in such original notice as was served upon Adolph Wehrman. He was notified of a suit upon a judgment rendered against him in the Circuit Court of Pierce county, Wisconsin, *in May, 1860.*

(Record p. 22, Original Notice Exhibit D.)

The petition in the attachment proceedings against him declared upon a judgment rendered against him by the said District Court of Pierce county, Wis., on or about the *12 day of May, 1860*, a transcript of which judgment purported to be annexed to the attachment petition. (Record p. 17, Exhibit B., and 18, Exhibit A to petition attached).

Exhibit A to petition attached is the so-called judgment upon which the attachment proceedings were founded. It is no judgment

at all, but simply an interlocutory decree for the sale of real estate in a mortgage foreclosure, with a provision that the plaintiffs in the proceeding, Greeley, Gale & Company might have judgment for any deficiency after the sale of the mortgaged premises. The judgment for such deficiency was not rendered until *September 12, 1860.* (Record p. 21, Exhibit B 2, and p. 127, 128).

Is is admitted by stipulation (Record pp. 121, 122) that the judgment against Adolph Wehrman in the attachment proceedings was rendered upon a transcript of the judgment of *September 12, 1860;* whereas, the suit was brought upon a pretended judgment of *May, 1860.*

Adolph Wehrman might well rely upon the fact that no judgment was rendered in May, 1860, in allowing the attachment proceedings to go by default. The substitution of a different judgment from that of which he had notice and from that described in the petition upon which the attachment was issued, rendered the whole proceeding a nullity.

3. The judgment rendered by the District Court of Woodbury county against Adolph Wehrman in the attachment proceedings was a judgment in *personam.* (Record p. 25, Exhibit F).

It did not order the attached property sold. It declared that the property mentioned and described *in* the writ of attachment should be sold to satisfy the judgment, but no property was described in the writ.

Following this form of judgment in *personam,* it was attempted to sell the land attached, not upon special execution, but upon general execution. And the attempted sale of the land was not by virtue of the attachment under a special execution, but by virtue of a levy of the general execution, issued upon the judgment in *personam.* For this general execution and return see Record pp. 27, 28, Exhibit I.

It is well settled, under the laws of Iowa, that a judgment in *personam,* rendered in attachment proceedings against a non-resident, even where land is regularly attached, is absolutely void and does not authorize a sale. Such sale is also void in any collateral proceeding.

Smith vs. Griffin, 59 Iowa, 409.
Cassidy vs. Woodward, 77 Iowa, 358.
Kelly vs. Ins. Co., 82 Iowa, 140.

So in a suit against a non-resident for the foreclosure of a mortgage, a judgment in *personam* is void, and sale of the mortgaged premises thereunder a nullity, which may be collaterally attacked.

Lutz vs. Kelly, 47 Iowa, 307.

It must follow, from these authorities, that if a judgment in *personam* is wholly void in attachment proceedings against a non-resi-

dent, a general execution and sale thereunder, even if there had been a judgment in *rem*, would be equally void. The proceeding must be in *rem* throughout. How can the sheriff acquire authority in such a proceeding by virtue of seizure under a general execution to sell the attached property? The proceeding, it is submitted, must become a nullity whenever it is thus changed from a proceeding in *rem* to an attempted proceeding in personam.

4. In, Iowa, as elsewhere, these *ex parte* proceedings against non-residents are strictly construed, as are other proceedings in *rem*, by which it is sought to divest the title to real estate. Thus, in a guardian's proceeding against a minor, it is held that where the application is for authority *to sell* real estate, the court has no jurisdiction to make an order authorizing the guardian *to mortgage* the property, which is, of course, after all, a conditional sale.

McManus vs. Rice, 48 Iowa, 361.

And in such proceeding in the absence on the face of the record of proof of notice; or a finding by the court that notice has been given, the proceedings are void and no title passes.

Rankin vs. Miller, 43 Iowa, 11.

So in attachment proceedings where a former statute required the sending of a copy of the petition by mail to the defendant, it was held that no judgment could be rendered until this condition precedent had been complied with.

McGahen vs. Carr. 6 Iowa, 31.

And the fact that proof of such mailing of a copy of the petition was made before judgment, is required to appear on record, and will not be presumed.

Broghill vs. Lash, 3 Green, 357.
Taylor vs. Brobst, 4 Green, 534.

And where it does not appear upon the face of the record that the petition had been mailed before judgment in the attachment proceedings such judgment is absolutely void, and sale under it is void, and the proceedings cannot be validated by supplying defects in the service and proofs after the judgment was rendered.

Hobson vs. Tebbits, 16 Iowa, 97.

The fact of mailing the petition is a jurisdictional step upon which the power of the court depends, and should be made to appear permanently upon the record.

Abell vs. Cross, 17 Iowa, 171.

And the record must show that the defendant is a non-resident

of the state, and that the action relates to some of the matters in *rem*, enumerated in the statute, or the judgment will be void. The fact of publication must be shown by the record or the judgment will be void. These matters will not be presumed in order to sustain attachment proceedings.

Sweeley vs. Van Steenburg, 69 Iowa, 696.

And where the statute required an order of publication to be made by the court, such order could not be made by the clerk, and a judgment upon service of publication thus ordered is wholly void.

Miller vs. Corbin, 46 Iowa, 150.
Royer vs. Foster, 62 Iowa, 321.
And see *Frazier vs. Steenrod*, 7 Iowa, 345.

In the absence from the record of proof of notice, or a finding of the court that notice has been given, the proceedings in a guardian's sale are void. The jurisdictional facts must appear of record, and will not be presumed.

Rankin vs. Miller, 48 Iowa, 21.
And see also *Good vs. Norley*, 28 Iowa, 188.
Washburn vs. Carmichael, 32 Iowa, 485.
Lyon vs. Vanatta, 25 Iowa, 52.

Under these decisions the failure of the record in the attachment proceeding to disclose the necessary prerequisites upon which the judgment must be founded, renders the proceedings wholly void.

6. At the time of the judgment in the attachment proceedings, the following statutory provision was found in the Revision of Iowa:

Section 3164: "No personal judgment shall be rendered against a defendant served by publication only, who has not made an appearance. But a personal judgment shall be rendered against a defendant whether he appear or not, who has been served in any mode in this Code provided other than by publication, whether served within or without the state."

To this section was appended the following note by the commissioners who framed the revision:

"As between a personal judgment and one in *rem*, good sense seems to demand that a personal notice, wherever made, should entitle to a personal judgment, and that notice by publication only should only entitle to one in *rem*. Most of the reasons have ceased to exist, which formerly prevented this. The notice which can be served anywhere, stands instead of the summons which was not of value outside of the jurisdiction. The judgment now, too, is seldom to be enforced by personal restraint, and is chiefly satisfied with property. If the defendant has then, or shall in future have any property within the state whose laws provide for his personal service with notice without such state, he certainly, to the extent of that property which solicits and receives the protection of such state, should render to her allegiance. This principle is recognized in the judgment in *rem*. But the advantage of the proposed extension is this: the judgment in *rem*, is measured by the property in court, which may be quite insufficient to discharge the claim, and if the defendant brings more into the jurisdiction subsequently, the plaintiff has to repeat his process by another suit, and perhaps, by many in succession, at cost and trouble, before he makes

his debt, while by this plan, having got a personal notice anywhere, he has a personal judgment, good here at least, and which may be extended over any property of the defendant, then, or afterwards, within this state."

There is no doubt that the judgment in *personam* was rendered in the attachment proceedings and sought to be enforced by a general execution or by process in *personam*, upon the theory that such process and judgment was valid, under this section of the revision. As already pointed out, however, judgments in *personam* under this section of the statute have been held void repeatedly, and the principle settled by these decisions is now so familiar and elementary that even compilers of c odes would now know that a judgment in *personam* rendered on process or notice extra-territorially served, is absolutely void.

Darrance vs. Preston, 18 Iowa, 396.
Bates vs. Ry. Co., 19 Iowa, 260.
Mooney vs. Ry. Co., 60 Iowa, 346.
Weil vs. Lowenthal, 10 Iowa, 575.
Hakes vs. Shupe, 27 Iowa, 465.
Melhop vs. Doane, 31 Iowa, 379.

IV.

THE VOID ATTACHMENT NOT VALIDATED BY THE DECREE IN EQUITY.

From the authorities already cited, it is obvious that a valid judgment in *personam* could no more be rendered against the appellant in the suit in equity brought to subject the land to sale in the attachment proceeding, than could be rendered against Adolph Wehrman in the attachment proceeding itself. The decisions of this court as to decrees in equity against defendants served by publication, or extra-territorially served, are conclusive against the power to render such decrees in *personam*.

Hart vs. Samson, 110 U. S., 151.
Pennoyer vs. Neff, 95 U. S., 715.

A subsequent decision of this court, holding that title to real estate may be quieted by service on publication under state statutes, simply establishes the doctrine that such proceedings are in *rem*, and only bind the real estate and determine and fix its title in the cases to which they relate.

Arndt vs. Griggs, 134 U. S., 316.

This decision does not hold or intimate that any form of judgment in *personam* may be rendered on service of process by publication or on personal service extra-territorially made.

"The tribunals of one state have no jurisdiction over the persons (of citizens) of other states, unless found within their territorial limits. They cannot extend their process into any other states, and any attempt of the kind would be treated in every other forum as an act of usurpation without any binding efficacy. 'The authority of every judicial tribunal, and the obligation to obey it,' says Burge, in his Commentaries, 'are circumscribed by the limits of the territory in which it is established.' 'No sovereignty,' says Story, in his Conflict of Laws, 'can extend its process beyond its own territorial limits to subject either person or property to its judicial decisions. Every exertion of authority of this sort, beyond this limit, is a mere nullity and incapable of binding such persons or property in other tribunals.'"

Galpin vs. Page, 18 Wall., 367.

And in the same case it was held that:

"Where the special powers conferred are exercised in a special manner in accordance with the course of the common law, or where the general powers of the court are exercised over a class not within its ordinary jurisdiction, upon the performance of prescribed conditions, no presumption of jurisdiction will attend the judgment of the court. The facts essential to the exercise of the special jurisdiction must appear in such cases upon the record." Page 371.

And where a judgment in *personam* was rendered upon substituted service on a member of defendant's family, with no showing in the return of service, that the defendant was not found, this court held such judgment absolutely void, although it was recited on the face of the judgment itself, that the defendant was duly served.

Settlemier vs. Sullivan, 97 U. S., 449.

And where in an action to try a title to real estate, there was, on service of citation by publication on a non-resident, a judgment against him in *personam* for costs, that portion of the judgment was held absolutely void. This court said, opinion by Mr. Justice Field:

"The service of citation by publication may suffice for the exercise of the jurisdiction of the court over the property, so far as to try the right to its possession, and to decree its partition; but it could not authorize the creation of any personal demand against the defendant, even for costs which could be satisfied out of his property.

"The judgment is for all the costs in the case, and no order is made that they be satisfied out of the property partitioned. Had satisfaction been thus ordered, no execution would have been necessary. The execution also is general in its direction, commanding the sheriff to make the costs out of any property of the defendant.

"The judgment, as far as the costs are concerned, must, therefore, be treated as a judgment in *personam*, and for the reason stated, it was without any binding obligation upon the defendant, and the execution issued upon it did not authorize the sale made, and, of course, not the deed of the sheriff. Were the conclusion otherwise, it would follow, as indeed it is claimed here, that the joint owner of real property might sue a non-resident co-tenant for partition, and, having had his own interest set apart to himself, proceed to sell out, on execution, the interest of his co-tenant for all the costs."

Freeman vs. Alderson, 119 U. S., 190.

Where it was attempted to cut off the rights of non-resident holders of municipal bonds by a decree in the state courts of Illinois, rendered on service by publication, such decree was held to be absolutely void. This court said:

"It would be a reproach to jurisprudence if the rights of citizens of Maine to

recover the contents of a chose in action, held and owned by them, could be cut off by a suit in Illinois to which they were not made parties by name, and in which there was no personal service or appearance."

Pana vs. Bowler, 107 U. S., 545.

The notice in that case was to the unknown holders of the municipal bonds.

And where a like suit was brought against a railway company, holder of municipal bonds, and others, and a decree rendered that the bonds were null and void, and should be surrendered for cancellation, it was held of the decree in such case, by this court:

It could not affect the rights of non-resident holders of bonds and coupons proceeded against by constructive service. Such service as to them was ineffective for any purpose whatever."

Brooklyn vs. Ins. Co., 99 U. S., 370.

So in a case already cited, it was held that where property is brought under the control of the court by seizure, or some equivelant act, there it may be appropriated to the payment of the debts of a defendant served by publication, or served outside the state; but where there is no such seizure, and the suit is brought to determine such defendant's personal rights and obligations, it is merely in *personam*, and such service upon him is ineffectual for any purpose. It was there said, opinion by Mr. Justice Field:

"In other words, such service may answer in all actions which are substantially proceedings in *rem*, but where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely in *personam*, constructive service in this form upon a non-resident is ineffective for any purpose. *Process from the tribunals of one state cannot run into another state and summon parties there domiciled to leave its territory and respond to proceedings against them.* Publication of process or notice within the state where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the state, and process published within it, are equally unavailing in proceedings to establish his personal liability.

"The want of authority of the tribunals of a state to adjudicate upon the obligations of non-residents where they have no property within its limits is not denied by the court below; but the position is assumed that where they have property within the state, it is immaterial whether the property is, in the first instance, brought under the control of the court by attachment, or some other equivalent act, and afterwards applied by its judgment to the satisfaction of demands against its owner; if such demands be first established in the personal action, and the property of the non-resident be afterwards seized and sold on execution. But the answer to this position has already been given in the statement that the jurisdiction of the court to inquire into and determine his obligations at all, *is only incidental to its jurisdiction over the property.* Its jurisdiction in that respect cannot be made to depend upon facts to be ascertained after it has tried the cause and rendered the judgment. *If the judgment be previously void, it will not become valid by a subsequent discovery of property of the defendant or by his subsequent acquisition of it. The judgment, if void when rendered, will always remain void.* It cannot occupy the doubtful position of being valid, if property be found, and void, if there be none. * * * The contrary is the law. *The validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently.*"

Pennoyer vs. Neff, 95 U. S., 728.

Now, the simple fact is, that the suit in equity in aid of the attachment proceedings, to subject to sale the land attempted to be attached, was not an original suit. It was merely ancillary to the attachment suit, and merely in aid of the supposed attachment. The only ground upon which the court attempted to exercise jurisdiction, the only ground upon which its jurisdiction was invoked, was *to subject the land to such attachment and judgment as had been procured in the action at law.* The only proceeding, or attempted proceeding, which gave, or was supposed to give, the court jurisdiction in the ancillary suit, was an attempted attachment at law. There being no such attachment and no seizure of the property whatever, all proceedings therefor being absolute nullities, the *res* was not brought within the jurisdiction of the court, and it could not be dealt with in the ancillary suit in equity. There was nothing for that suit to act upon; it was in no sense a suit in *personam*, the decree had no binding force, or effect as a decree in *personam*, and as the court had no jurisdiction in *rem*, the decree was as void as the original attachment.

A case illustrating the strictness with which suits in *rem* against non-resident defendants are scrutinized by this court was where a state statute authorized any person who claimed land "as a locator or by bond or other instrument in writing," to institute a suit in equity and obtain a decree for such land. A suit was brought under this statute, and a decree rendered for the land. But the bill seeking the decree did not show that the complainant claimed "as a locator or by bond or other instrument in writing." It was held that this bill did not authorize publication, and that a decree secured by publication was absolutely void. It was said:

"The bill does not pretend that the complainant held, or ever did hold, any instrument in writing. * * * The bill shows that he did not claim as locator in the sense of the term * * * It appears clear to my mind that the cause was not within the provisions of either of the statutes, and that the order of publication, and the proceedings and decree thereupon were wholly unauthorized and unwarranted by the law of the land. The question is, is the decree therefore erroneous only, or is it simply void?

"It seems difficult to escape from the conclusion that if the order of publication was wholly unwarranted by law, the publication is as if it had never been made. Even in cases expressly authorized by the statute, a publication is only a constructive notice to the party, but if the publication in a particular case be unauthorized, no principle is perceived upon which it can be regarded as constructive notice. * * * The case under consideration is not properly a proceeding in *rem*, and a decree in chancery for the conveyance of land, has never yet, within my knowledge, been held to come within the principle of proceedings in *rem*, so far as to dispense with the service of process on a party. *There is no seizure nor taking into custody of the land, so as to operate as constructive notice. Constructive notice, therefore, can only exist in the cases coming fairly within the provisions of the statute authorizing the courts to make orders of publication,* and providing that the publication when made, shall authorize the courts to decree. It has been already shown that this case is not within the provisions of any statute.

"It would seem to follow that the court acted without authority and that the decree is void, for want of jurisdiction in the court."

Hollingsworth vs. Barbour, 4 Peters, 473.

Applying the doctrine of this case to the ancillary suit brought in aid of the attachment against this appellant, Frederick Wehrman, and his grantor, Adolph Wehrman, it will be found that there was no statute authorizing publication or process against non-residents in such ancillary suit. The revision, 1860, provided as follows as to

SERVICE BY PUBLICATION.

Section 2831. "Service may be made by publication in either of the following cases:

1. In actions brought for the recovery of real property, or an estate or interest therein.
2. In an action for the partition of real property.
3. In an action for the sale of real property under a mortgage lien or other incumbrance or charge.
4. In actions to compel the specific performance of a contract of sale of real estate, or in actions to establish or set aside a will, where in such cases any or all of the defendants reside out of this state, and the real property is within this state.
5. In actions brought against a non-resident of this state, or a foreign corporation having in this state property or debts owing to such defendant, sought to be taken by any of the provisional remedies, or to be appropriated in any way.
6. In actions which relate to, or the subject of which is real or personal property in this state, when any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the state or a foreign corporation.
7. In all actions where the defendant being a resident of the state has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a notice, or keeps himself concealed therein with the like intent.
8. Where the action is for a divorce."

Section 2832: "Before service can be made by publication, an affidavit must be filed that personal service of notice cannot be made, within this state, on the defendant to be served by publication. When such affidavit is filed the party may proceed to make service by publication."

Section 2835: "Actual personal service of the notice within or without the state, supersedes the necessity of publication."

As to the third subdivision in Section 2831, there was no incumbrance or charge against the land because, as has been seen, there was no valid attachment.

As to subdivision five, the land was not sought to be taken by any of the provisional remedies, *i. e.*, attachment—because there was no attachment, neither was it sought to be appropriated in any way. The supposed proceedings for its appropriation were absolute nullities. Nor does sub-division 6 apply to, or authorize the ancillary suit, or service by publication therein.

It will be observed that personal service outside of the state in Section 2835 is a mere substitute for publication, and does not authorize suits in *rem*, except in cases where such suits may be brought on constructive service by publication. As to actions in aid of execution (or attachment) the revision of 1860 provided,

EQUITABLE ACTIONS SUPPLEMENTAL TO EXECUTION.

Section 3391: "After an execution directed to the sheriff of the county in

which the judgment was rendered, or to the sheriff of the county of the defendant's residence, is returned by the proper officer either as to the whole or part thereof, in substance, no property found to satisfy the same, the owner of the judgment may, in his discretion, institute an action by equitable proceedings in the court from which the execution issued, or in any court having jurisdiction of the cause, for the discovery of any money, chose in action, equitable or legal interest, or any other property to which the defendant is entitled, and *for subjecting the same to the satisfaction of the judgment;* and in such actions, persons indebted to the defendant in the execution, or holding the money or property in which he has an interest, or holding the evidences or securities for the same, may be also made defendants."

This section merely authorizes ancillary suits for the discovery of assets and "for subjecting the same to the satisfaction of the judgment." If there was no judgment there could be no suit in aid of it, or in aid of an execution or attachment. In any case, these statutory proceedings could be simply and only to subject the property to such judgment or attachment as existed and could not be made an excuse for a decree in *personam*, validating a void judgment, or subjecting real estate to sale, where there was no semblance of seizure or attachment, and the property was, therefore, not brought within the jurisdiction of the court, or subject to its orders.

Thus, it has been decided by this court that where an interlocutory decree did not order the sale of real estate, a sale under such decree is absolutely void, and no amendment *nunc pro tunc* can make the sale good or bolster up the power to make it. In a law action in ejectment where such title was collaterally assailed, this court said, opinion by Mr. Justice Field:

"By no rule of law can a decree which was clearly an afterthought and made subsequent to the sale, bolster up the authority to make it. *Purchasers at a judicial sale are protected when the power to make the sale is expressly given, not otherwise.* It is only when they buy on the faith of an order of the court which clearly authorizes the act to be done, that the shield of the law is thrown around them. An officer of the court may erroneously suppose that the power to sell is given by the decree, yet if he does sell, his act is without authority of law, and is void."

Grey vs. Brignardello, 1 Wall, 836.

In another case where the sale was not warranted by the decree but was erroneously made, and there was a decree of confirmation, this court said:

"That the trustee was not authorized to sell by the decree, has already been shown. It would seem, however, from the form of his report that he assumed to act only by virtue of the decree.

"Does the ratification of the sale bring it within the rule which applies to a case where the court has jurisdiction, and has committed errors in the proceedings? Had the court jurisdiction of the tract of land in controversy? *At the time the decree was entered that tract was no more subject to the power of the court than every other tract in the country.* * * * The validity of this sale, then, must rest upon the fact of its having been made by the trustee and sanctioned by the chancellor. There would seem to be no ground for doubt on this point. * * * The sale being, then, without authority, the ratification of it by the court must be considered as having been given inadvertantly. If given deliberately, and on a full examination of all the facts, still it must be regarded as an unauthorized proceeding. There was no case before the court. *Nothing on which its judgment could rest.* No court, however great may be its dignity can arrogate to itself the power to dispose of real estate without the forms of law. It must obtain jurisdiction of the thing in a legal mode.

A decree without notice would be treated as a nullity. And so must a sale of land be treated which has been made without an order or decree of the court, though it may have ratified the sale."

Shriver's Lessee vs. Lynn, 2 How., 59.

As the land in the case at bar was not seized by attachment proceedings, it is evident that it was in no manner within the jurisdiction of the court for the purpose of being sold on attachment, nor to enable the court to enter a decree touching the land in the ancillary suit in aid of the attachment, attempting to subject the land to sale on an attachment which had no existence.

It is true, that in the case from which this language is quoted, the land sold was not described in the petition, and the owners therefore had no notice of the application to sell. But there was public notice given before the order of confirmation was entered. In a later case where the sale was not warranted by the decree, it was held to be a nullity, although it had been confirmed by a subsequent order of the court. This court said, opinion by Mr. Justice Milller:

"It is too clear for argument that the sale by the marshal unauthorized by the decree is without any validity. Does the order of the court confirming the sale make it valid?

"Upon principle the question is by no means free from difficulty. We are clear that a sale without a decree to sustain it would be a nullity, and we doubt if a court can make it valid by a mere general order of confirmation. If however, an issue had been made by exceptions or other proper pleading as to the question, whether any particular piece of property had been included in the decree or order of sale and the court had decided that it was so included it might by an adjudication upon the construction of the decree, which would bind the parties. Nothing of the kind occurred here. There is every reason, on the contrary, to believe that the court had no suspicion that the marshal had sold more than the decree authorized."

Minn. Co. vs. St. Paul Co., 2 Wall., 640.

So in the case at bar, a sale of the land without an attachment to sustain it, was a mere nullity. The decree of the court in a default case against a non-resident, *ordering the "sale of the land according to law," was for the satisfaction of such judgment and attachment as existed*, and the decree amounted to nothing more. It did not cure nor attempt to cure the void attachment proceedings.

The same rule has been applied by this court to a sale of property not seized in confiscation proceedings. The seizure of the property was necessary to give the court jurisdiction for its condemnation.

Pike vs. Wessell, 94 U. S., 712.

And a sale of lands under a decree entered by a judge who was prohibited from acting, because of his relationship to the parties, is absolutely void. Nor does a subsequent decree of court in a foreclosure proceeding in which this sale was incidentally recognized as valid, act as an estoppel or decree curing the void sale, there being no formal issue or contest presenting that question for determination.

Horton vs. Howard, (Mich. 1890) 44 N. W. Rep., 1112.

In another case this court said:

"No person is required to answer in a suit on whom process has not been served, or whose property has not been attached. In this case there was no personal service, nor an attachment or other proceedings against the land, until after the judgments. The judgments, therefore, are nul ities and do not authorize the executions on which the land was sold."

Webster vs. Reid, 11 How., 460.

That is the situation in the case at bar. There was no attachment or seizure of the lands until after the judgment in the attachment suit, and after the decree in the equity suit in aid of the attachment. Then the attempt was made to seize the lands on a general execution, under a judgment in *personam*.

In another case where an attempt was made to sell on execution real estate not described in the pleadings, and not seized by attachment, this court said:

"No principle is more vital to the administration of justice than that no man shall be condemned in his person or property, without notice and an opportunity to make his defense. And every departure from this fundamental rule by a proceeding in rem, in which the publication of notice is substituted for personal notice on the party, should be subjected to a strict legal scrutiny. Jurisdiction is not to be presumed and exercised in such cases upon the general ground that the subject matter of the suit is within the power of the court. This would dispense with the forms of law prescribed by the legislature for the security of absent parties. The question should be, *have the requisites of the statute been complied with so as to subject the property in controversy to the judgment of the court?* And is such judgment limited to the property named in the bill? If this cannot be answered in the affirmative, the proceedings of the court beyond their jurisdiction are void."

Boswell's Lessee vs. Otis, 9 How. 171.

In a case where judgment and execution were unauthorized, this court said as to a confirmation of sale thereunder.

"A confirmation of a sale may cure mere irregularities not affecting its fairness, but not an infirmity growing out of the nullity of the judgment under which it was had."

Lamaster vs. Keeler, 123 U. S. 391.

A sale of real estate on execution by U. S. Marshal without the appraisment required by the state laws is absolutely void when collaterally assailed.

Smith vs. Cockrill, 6 Wall. 750.

V.

DECREE SUBJECTING PROPERTY.

STRICTLY LIMITED BY STATUTE AUTHORIZING SUCH PROCEEDING IN REM, AND BY ALLEGATIONS IN BILL ON WHICH SUCH DECREE WAS FOUNDED.

The court below seems to have proceeded upon the theory that

as to the decree in the suit in equity to subject the land to the payment of the judgment in the attachment proceedings, all recitals in that decree, all incidental references therein, and all adjudications express, inferential, or potential, are binding in personam upon the defendants in that suit, to all intents and for all purposes whatever. Such, however, is not the law. To begin with the decree is necessarily limited by the statute authorizing a proceeding in rem of this character against non-residents of the state.

It has already been pointed out that the statute in aid of executions or attachments only authorizes a suit, and consequently only authorizes a decree, *to subject property to payment* of a judgment. This contemplates an existing judgment. Where there is none, as in the case at bar, no suit of this character can be maintained to subject property to the payment of a judgment which does not exist. So as to Revision Section 3931 authorizing suits by publication. There is no provision there authorizing a suit of this character in the absence of an actual existing lien. There is nothing in that section which would authorize a suit in equity in *rem, to establish or validate* a void attachment in an action at law.

And where a proceeding of this kind is attempted the decree, even in an action where jurisdiction exists in *personam*, is limited strictly by the scope of the suit, and by the essential and controlling purpose set forth and alleged in the bill. Hence, it is well settled that in order to determine the effect of such a decree, the pleadings upon which it is founded must be introduced in evidence.

"The general rule is that where a party intends to avail himself of a decree as an adjudication upon the subject matter, and not merely to prove collaterally that the decree was made, he must show the proceedings upon which the decree was founded. 'The whole record,' says Baron Comyns, 'which concerns the matter in question, ought to be produced.'"

I Greenleaf on Ev. Sec. 511.

"Regularly, in order to prove the facts on which a decree purports to be founded, the proceedings on which it is founded, ought to be read in evidence.

"If the object of the evidence be to prove as an estoppel or as a legal title, a particular judicial result, e. g. the entering of a judgment—it is not enough to have a certificate of the result; the whole record, so far as it concerns the former stages, must either be produced or exemplified, and if exemplified, the exemplification must show on its face that the record is complete. Nor can the record be patched by parol. The component parts of the record should be so attached that it should appear that the certificate extends to them all. * * But in some shape, if the judgment of a court is put in evidence to effect a transfer of rights, *the preliminary conditions of the judgment must appear on the record*. Even a sentence in admiralty to sustain its admissibility for such purpose, must have attached to it the preliminary proceedings on which it is based. And the judgment of an ecclesiastic or probate court cannot prove title without producing the libel, and answer, and the defensive allegations."

I Wharton on Ev. Sec. 824.
Ford vs. Jefferson County, 4 Iowa, 568.
Campbell vs. Ayers, 6 Iowa 343.

"It is proper in all cases, and in cases where the entry is obscure, or not clear, it is necessary, to read the record entry in the light of the pleadings and of the entire record."

Fowler vs. Doyle, 16 Iowa, 535.
Smith vs. Swan, 69 Iowa, 415.

It is necessary to see the cumplete record of the suit in order to ascertain *what the question in issue* in such suit was.

Foof vs. Glover, Blackf. 313.
Glidwell vs. Plaug, 27 Ind., 322.

In support of a plea of former decree, it is necessary to set forth so much of the first bill and answer as *will show that the same point was then in issue*.

Lockwood vs. Wildman, 13 Iowa, 450.

"A judgment is conclusive either as a plea in bar, or as evidence, only as to facts directly and distinctly put in issue, and the doctrine of estoppel is limited to those facts. It does not extend to facts which may be in controversy, but which rest in evidence, and are merely collateral. *Neither does it extend to facts raised incidently* or by immaterial issue, or which are to be inferred by argument from the judgment."

Williams vs. Williams, 63 Wis., 71.
Gray vs. Dougherty, 22 Cal., 266.
Lea vs. Lea, 98 Am. Dec., 779 and authorities cited in Note.

"It is undoubtedly settled law that a judgment of a court ofcompetent jurisdiction upon aquestion directly involved in one suit is conclusive as to that question in another suit, between the same parties. But to this operation of the judgment *it must appear either upon the face of the record or be shown by extrincic evidence that the precise question was raised and determined in the former suit*. If there be any uncertainty on this head in the record—as for example, if it appear that several distinct matters may have been litigated, upon one or more of which the judgment may have passed, without indicating which of them was thus litigated, and upon which the judgment was rendered—the whole subject matter of the action will be at large, and open to a new contention, unless this uncertainty be removed by extrincis evidence showing the precise point involved and determined."

Russel vs. Place, 94 U. S., 608.

It must appear, by the record of the prior suit, that the particular controversy sought to be concluded was necessarily tried and determined.

Ecker vs. Pickle, 59 Iowa, 548.

"As we understand the rule in respect to the conclusiveness of the verdict and judgment in a former trial between the same parties, when the judgment is used in pleading as a technical estoppel, or is relied on by way of evidence, as conclusive *per se*, it must appear by the record of the prior suit that the particular controversy sought to be concluded was necessarily tried and determined—that is, *if the record of the former trial* shows that the verdict could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties; and further, in cases where the record itself does not show that the matter was necessarily and directly found by the jury, evi-

dence *aliunde* consistent with the record may be received to prove the fact; but even where it appears from the extrinsic evidence that the matter was *properly* within the issue controverted in the former suit, if it be not shown *that the verdict and judgment necessarily involved its consideration and determination*, it will not be concluded."

Packet Co. vs. Sickels, 5 Wall., 592, and authorities there cited.

Tested by these authorities, what was or could have been in issue in the suit to subject the land to the payment of the judgment in the attachment proceedings?

The statute did not authorize a suit in equity *to create a judgment at law or an attachment at law*, and then subject the land to the payment of such judgment or attachment; but only a suit to subject the land to such attachment or judgment as already existed.

It is alleged that the pleadings on which this decree in equity was founded are lost. This is not sustained by the proofs. In place of the production of the bill or petition to subject the land to payment of the void attachment and judgment, the bill in this case alleges all we know as to the basis and foundation of that proceeding. In the bill (Record p. 6) it is stated that in the suit to subject the lands "plaintiffs alleged the rendition of the said judgment (at law) against the said Adolph Wehrman, and that the said conveyance was made for the purpose of hindering and delaying and preventing said Greeley, Gale & Company in collecting the said claim and judgment against the said Adolph Wehrman, and that the same was without consideration and fraudulent and void, and of no force or effect as against the plaintiffs in said action, and praying that the said conveyance be set aside, canceled and declared void as against said plaintiffs and asking that said lands be all subjected to the payment of the said judgment of Greeley, Gale & Company against the said Adolph Wehrman rendered by the said District Court of Woodbury County as aforesaid."

This is admitted by the answer (Record p. 49), and here we have the basis and pleading on which the decree under consideration was rendered.

The object was to subject the land to the payment of the judgment rendered in the attachment proceedings.

The attachment proceedings themselves were not set up or referred to. Evidently, the pleader simply annexed or set forth a copy of the judgment in the action at law, and asked that the land be subjected to the payment of that judgment.

The validity of the attachment was not put in issue. It was not mentioned or suggested that the judgment was in *rem*, and only existed by virtue of an attachment. The judgment, on its face purported to be in *personam* and upon sufficient personal service of process.

Upon this record, the only decree which could be rendered, or

was rendered, was to subject the land to *such* judgment as existed, if any did exist. The decree was that the land be sold according to law to pay off the judgment. The decree did not attempt a sale by virtue of the attachment proceedings, or on a special execution, but only on such general execution as might be issued upon the judgment in *personam* which the decree was in aid of. This concludes nothing except that the lands were subjected to the payment of such judgment as existed.

Such is the construction of this court as to similar decrees. Thus, where at the suit of a judgment creditor, there was a decree that articles of agreement between the defendants in the suit, who were a railway company and one Chamberlain, "be vacated, annulled and made void, so that the same should not be of any force or effect whatever, and that the judgment and all executions and proceedings thereon be and hereby are vacated, annulled, made void and set aside, so that the same shall have no effect whatever," it was held that this decree, as between the two defendants against whom it was rendered, did not invalidate the agreement or the judgment. The court said:

"We have seen already that, according to the allegation of the Minnesota Company in their bill now before us, the issue between Cleveland, the complainant, and the La Crosse Company and Chambertain, the respondents in the cause in which that decree was made, was upon the question whether the agreement and judgment were or were not void as against Cleveland and his judgment. The decree was evidently intended to determine that issue. It was, as evidently, not intended to determine the question whether the making of the ageeement was beyond the corporate powers of the La Crosse Company, for there are no terms which affirm its inherent invalidity without regard to intent. *It is our duty to construe the decree with reference to the issue it was meant to decide.* Its words are very broad and emphatic; but we cannot say that they were intended by the District Court to have any greater effect than to avoid and set aside, as against Cleveland, the agreement and the judgment impeached by his bill. We think, on the contrary, that a decree having such an effect, could not have been properly rendered upon the pleadings and issue in that cause. Neither the La Crosse Company nor Chamberlain sought to avoid the agreement or the judgment, nor asked any relief whatever as against each other. Indeed, the case shows that both regarded the agreement and the judgment as essential to their respective interests. We cannot ascribe to any court an intention, by a decree on such pleadings, to annul such an arrangement as between the parties to it, nor could we approve such action, even were the intent clear beyond question. No question was made between Chamberlain and the La Crosse Company, nor could any question arise between them of any such nature as that between those parties and Cleveland, nor could they be required, in a suit prosecuted by Cleveland to enforce satisfaction of his judgment by setting aside their arrangement as void against creditors, to submit that arrangement, as between themselves, to the action of the court."

Graham vs. Ry. Co., 3 Wall., 710.

And in another case, where a foreclosure and purchase was declared void in favor of certain creditors, and the party against whom this adjudication was made thereafter attempted to set it up in its own behalf, this court said:

"But the complainants are wrong in asserting that the property was not theirs. It was theirs. Their purchase was declared void only as against the creditors of the La Crosse and Milwaukee Railway Company. In other words, it was voidable, not

absolutely void. By satisfying these creditors, they could have kept the property and their title would have been good, as against all the world. *The property was theirs. But, by reason of the fraudulent sale, was subject to the incumbrance of the debts of the La Crosse Company. This was the legal effect of the decree declaring their title void"*

Ry. Co. vs. Soutter, 13 Wall., 517.

In another similar case, this court said:

"Here the suit was by and for creditors to set aside the mortgage to Barnes, and the foreclosure thereunder, because made and had to hinder and delay them in the collection of their debts. The decree, therefore, although broader in its terms, must be held to mean no more than that the foreclosure was void *as to these creditors*, whose claims were inferior in right to that of the mortgage. And that the Minnesota Company was restrained and enjoined from asserting title *as against them*, and also that if they undertook to sell the property and pay their judgments, the mortgage to Barnes should stand only as security for such bonds as had been actually negotiated by the La Crosse Company, the bona fide holders."

Barnes vs. Ry. Co., 122 U. S., 14.

In like manner must the decree to subject the land in this case be limited. It did not divest Frederick Wehrman of his title. It merely subjected the lands to payment of such judgment as existed. A sale under the judgment was still necessary to divest the title, and there being no valid attachment, the attempted sale thereunder was of no force or effect and the title remained in appellant and there remains to this day.

Suppose the decree good, as to utterly setting aside the title of appellant for all purposes, how does that help the complainant and appellee in this suit? The title would simply be vested in Adolph Wehrman, and never having been divested by the attachment proceedings or sale thereunder, Conklin cannot, in this suit, be entitled to relief or to a decree as to land which, on this theory, would belong to another, and as to which neither he nor his creditors ever acquired title.

A former decree is an estoppel only as to the point or question actually litigated or determined, and not as to other matters which might have been litigated and determined.

Nesbit vs. Riverside District, 144 U. S., 618.
Cromwell vs. Sac County, 94 U. S., 351.

And where a court of equity is prayed to carry into effect a former decree, it will only do so where such former decree was warranted upon the facts of the entire record.

Gay vs. Parpart, 106 U. S., 699.
Wadhams vs. Gay, 73 Ill., 415.
Lawrence Co. vs. Janesville Mills, 138 U. S., 561.

In this case it is apparent that no decree in equity ever should have been entered attempting to validate the void judgment in the attachment proceedings. It does not appear that any such decree

was rendered. The claim that there is such an adjudication in the decree is founded upon inference, argument and conjecture. And in no event should this court interpose its equitable powers to give effect to the void judgment and attachment proceedings at law, or to any decree seeming to recognize those proceedings, either incidentally or expressly. But it is insisted for appellant that such recognition is, at the most, merely incidental, and amounts to no adjudication or estoppel.

In a very recent case where title to land was set up under judicial proceedings in the administration of an estate, the courts of the state where the judicial proceedings were had held that the title thereunder was good and conclusive. This court held, however, that the judicial proceedings and the decision of the state court sustaining their validity were void, because in conflict with the Fourteenth Amendment to the Constitution, and that they deprived the citizen of his property without due process of law, because the person whose estate was attempted to be administered upon was living, and hence *no jurisdiction existed*, and no finding or decree of the courts in favor of jurisdiction could make the proceeding other than absolutely void.

Scott vs. McNeil, 154 U. S., 692.

This case is decisive of the case at bar. The state courts acquired no jurisdiction without seizure of the land in controversy by valid process. No express finding of jurisdiction, if it had been attempted in the attachment proceedings, would have taken the place of this jurisdictional fact, which must exist before the court could act, as much as the death of the citizen before the courts can have jurisdiction to administer upon his estate.

Nor could any attempted finding in the ancillary suit to subject the land to payment of a supposed judgment, that there was jurisdiction to render such supposed judgment, take the place of jurisdiction itself. This would be only one step farther removed than the original attempt to establish jurisdiction by a void judgment of the court, and would be correspondingly a weaker, rather than a stronger attempt to establish jurisdiction which was non-existent in fact.

If, for instance, the courts of Iowa were to attempt to deprive Wehrman of his land on the ground that jurisdiction existed to render the original void judgment when, in point of fact, it is clear upon the face of the record that no such jurisdiction did exist, this court upon the authority of its decision now under discussion, upon writ of error, would hold without hesitation that such action amounted to depriving Wehrman of his property without due process of law, and would brush it aside as of no force or validity. How, then, can it fail to take the same action when the question comes before it by direct appeal, instead of on writ of error to the state courts?

If Adolph Wehrman had never conveyed the land to appellant

at all, a sale under the attachment proceedings would have been wholly void. Yet so far as plaintiffs in the attachment suit were concerned, it is undeniable that the decree subjecting the land to payment of their supposed judgment could place them in no better position than they would have been in if Adolph Wehrman had retained the legal title, and no such decree had been necessary. The decree added nothing to their rights. It simply authorized them to enforce such rights as they had.

If a decree in a suit wholly in rem, attempted to make good in rem a former void judgment in rem, there could be no jurisdiction to do this, and thus deprive the owner of the land of his property without any process of law whatever. A multiplication of void judgments is not process of law as decided by this court in Scott vs. McNeal, supra.

If it be said that when the decree was rendered the Fourteenth Amendment had not been adopted, I reply, that the attempt to deprive appellant of his property without due process of law arises when these void judicial proceedings are first asserted against him in this suit. A decree upholding void proceedings when there is no jurisdiction may as well be assailed collaterally, as by writ of error to this court to review it. The inhibition against depriving the citizen of his property without due process of law must protect the citizen whenever and wherever the attempt is made to rob him. The assailant will not be protected on the ground that some court has decreed in rem, when his adversary was not subject to its territorial jurisdiction, that the spoliation was lawful. If when the spoliation is finally attempted the constitutional guarantee is in force, its protection may then be successfully invoked; nor can it make any difference that the void process or judicial proceedings, under which the deprivation is attempted, were somewhere witnessed by a nugatory writing before the amendment was adopted.

Would the Federal courts the next week after the amendment was adopted and promulgated, have permitted the state courts and authorities to hang a man who had been condemned by a justice of the peace, on a summary hearing with no pretense of a jury trial, and no semblance of due process of law, merely because the judgment and process of this justice were dated one day prior to the adoption of the amendment? Would not this court uphold a writ of habeas corpus to compel the release of the condemned prisoner, and that, too, in a proceeding where the "process" of the justice of the peace was collaterally assailed?

If so, it should follow that this court cannot now permit appellant to be deprived of his property under color of the void attachment and other judicial nullities set up for that purpose.

VI.

THE TAX DEED IS VOID.

The tax deed under which Conklin claims title is also void. This deed is based upon a sale of the land by the treasurer of O'Brien county for the taxes of 1858 and 1859.

It is shown by the bill and admitted by the answer that when the taxes for these years were levied, and up to February 6, 1860, O'Brien county, where the lands are situated, was a part of Woodbury county. In other words, O'Brien county did not become a county until after the taxes were levied by Woodbury county, nor until they became due and delinquent. As to date of organization of O'Brien county see bill, record p. 2, top, and answer, record p. 42, top.

The situation of O'Brien county prior to its organization and while it was attached to Woodbury county, is thus set forth by Section 226, Revision of 1860, in force at that time. This same section having been Section 98 of the Code of 1851.

"Section 226. Unorganized counties and other districts now or hereafter annexed to any organized county for judicial, electoral and revenue purposes shall, for those purposes respectively, be deemed to be within the limits of the county to which they are or may be so annexed, and be deemed a part thereof, unless otherwise provided by law."

The Supreme Court of Iowa, in deciding upon the validity of a tax deed in this same county of O'Brien, and for taxes for the same years, 1858 and 1859, considering the section of the statute above cited, declared and decided:

"So far, then, as the taxes for the years 1858 and 1859 are involved, they were legally levied by Woodbury county. By the statute then in force the taxes were required to be levied and the tax list delivered to the county treasurer by the first day of November of the year in which the levy was made, and the taxes became delinquent on the First day of February, following. Under the law, the taxes in question for the year 1858, were delinquent on the first day of February, 1859, and the taxes of 1859 became delinquent on the first day of February, 1860. The county of O'Brien was not organized until February, 1860, and all these taxes were then unpaid, past due and delinquent. When the levy was made, the land in controversy was, by the express provisions of the statute above cited, in Woodbury county. It was subject to taxation in that county the same as any other land in the county. In making the estimates on the amount of taxes necessary to be levied for all lawful purposes, this land was included the same as other lands, and the taxes, when levied, became the source from which Woodbury county discharged its obligation to the state for the levy due to it, and for the various purposes for which taxes may be levied. Whether the right to these taxes could be divested by legislative authority, we need not determine. It appears to us very clear, that without an express act of the legislature there was no power in the officers of the new county over the taxes in question. They were past due, delinquent and collectible in Woodbury county, and belonged to that county. There appears to be no doubt as to the correctness of this proposition. See Desty Taxation, 95; Black. Tax Titles, 295; Cooley Taxation, 176; Austin vs. Holt, 32 Wis., 478; Moss vs. Sheers, 35 Cal., 38."

And after considering some other provisions of the statute which it was claimed would give these taxes and the right to sell lands for them, to O'Brien county, the Supreme Court of Iowa said:

"Our conclusion is that the taxes for which the lands were sold were payable to Woodbury county, and that a sale of the lands by the treasurer of O'Brien county was unauthorized and void. The sale having been void, a tax deed founded thereon conveys no title."

Hilliard vs. Griffin, 72 Iowa, 331.

This decision was made, as shown by the published report, June 11, 1877. The bill in this case was exhibited April 27, 1889. And it does not appear how long prior thereto the action at law against the complainant in the bill was commenced. October 11, 1890, the Supreme Court of Iowa reiterated the above decision as to the taxes for 1858 and 1859 on lands in Sioux county, then unorganized, and then attached to Woodbury county.

Pitts vs. Lewis, 81 Iowa, 51.
Ellsworth vs. Nelson, 81 Iowa, 57.

There can be no doubt, then, that the tax deed, under which the appellees claim title, is absolutely void. And it is settled by repeated decisions of the Supreme Court of Iowa, that where a tax deed is void for want of authority to make the sale, it is not cured or strengthened by the statute of limitations relating to such tax deed.

Case vs. Albee, 28 Iowa, 277.
Patten vs. Luther, 47 Iowa, 236.
Early vs. Whittingham, 43 Iowa, 162.
Nichols vs. McGlathery, 42 Iowa, 189.
Griffin vs. Bruce, 73 Iowa, 126.

Counsel for the appellees will, no doubt, rely, however, upon a subsequent decision of the Supreme Court of Iowa, made June 2, 1891, and holding, that in a case where Sioux county had secured a decree and adjudication in a legal suit against Woodbury county, declaring that the unpaid taxes for 1858 and 1859 belonged to Sioux county, and authorizing that county to collect them; in such case a tax deed made upon a sale by the treasurer of Sioux county for these taxes was valid.

Canon vs. Nelson, 83 Iowa, 242.

This decision, however, goes upon the ground of estoppel and res adjudicata, by reason of the decree between the two counties in a suit to determine which county was entitled to the taxes.

It holds that the tax payers of a county are concluded and estopped by the adjudication because they are members of the municipal corporation which was a party to the litigation.

This decision does not hold that the counties by mere contract of agreement between themselves could transfer the right to collect taxes, or the power to sell lands for non-payment of taxes to Sioux county.

Nor does this decision hold that the action of the court which decided the controversy between Sioux and Woodbury counties was well founded in law, or that it was a decision which would not have been reversed on appeal. But the decision having been rendered, what the Supreme Court does hold is that it is conclusive between the two counties and as to all tax payers of said counties.

Obviously this decision does not aid the claim of appellees in this case under the tax title. The Supreme Court of Iowa in the cases above referred to held just such a tax title, under tax sale by the authorities of this same county, for taxes of the same years, void, because O'Brien and Woodbury counties could not agree to transfer the taxes and transfer the power to sell. These decisions have not been recalled or overruled by the case last referred to, supra.

It does not aid the tax title under which appellees claim for them to aver that because of the decision in favor of Clay county where similar taxes were involved, Woodbury county concluded voluntarily to turn over the taxes under which these tax deeds were made to O'Brien county. This still remains nothing but a matter of attempted compact between the two counties, the *reason* for such compact being quite immaterial.

This is all that is averred in the bill to strengthen appellees' tax title, as compared with similar titles held void by the Supreme Court of Iowa. (See facts stated in the bill, Record pp. 9–10.)

These allegations are denied by the answer. (Rec. pp. 52–53.)

It is shown by the proofs that there was such a litigation between Clay and Woodbury counties, as alleged in the bill. (Rec. pp. 97–98–99.)

And it is further shown that afterwards the county judge of Woodbury county ordered $457.51 of taxes which had actually been collected, turned over to the authorities of O'Brien county. (Rec. p. 100.) But it is not shown by any proof or attempted proof that the uncollected taxes or the right to collect the same, were ever in any manner turned over to the authorities of O'Brien county, either on account of the decision in the Clay county litigation or for any other reason.

It is submitted, then, that the tax title under which appellees claim, must be declared void under the decisions of the Supreme Conrt of Iowa cited and relied upon above.

The law as to the sale of property for taxes was many years ago laid down as follows, by Chief Justice Marshall:

> "That no individual or public officer can sell and convey a good title to the land of another, *unless authorized to do so by express law*, is one of those self-evident propositions to which the mind assents without hesitation. That a person invested with such power *must observe with precision the course prescribed by law*, or his act is invalid, is a principle which has been repeatedly recognized by this court."

Thatcher vs. Powell, 6 Wheat., 125.

This certainly does not recognize the doctrine that where one officer of a particular county is given a statutory power to sell real estate for taxes, this statutory power may be conferred by contract and assignment upon a different officer of another and entirely different county. No such doctrine is recognized anywhere in the books. It is obvious that if this could be done, the citizen never would know where to pay his taxes nor where to make redemption of his property, in case of tax sales.

Furthermore, it goes without saying, that if tax titles upon which appellees rely are valid, they are legal titles to be asserted against appellant in the action at law, and that a court of equity has nothing to do with them one way or the other.

VII.

NO ESTOPPEL IN PAIS BY CONDUCT, ACQUIESCENCE, OR LACHES, IS SHOWN.

This brings us to the question of estoppel in pais set up by appellees.

Of course, if the judicial proceedings which they rely upon are valid, such proceedings constitute an estoppel of record, of which appellees may avail themselves in the action at law.

It is, therefore, only upon the theory that the judicial proceedings and tax deeds are nullities, that it can become material to consider the alleged estoppel in pais.

There are some extraneous matters which ought to be eliminated before considering at large the alleged estoppel by conduct.

Thus, it is alleged that the conveyance of the land by Adolph Wehrman to the appellant, Frederick Wehrman, was for the purpose of hindering, delaying and defrauding the creditors of the former. (See allegation in the bill, record p. 7.)

This is denied by appellant's answer which is under oath. (Rec. pp. 50–51.)

Obviously, if this charge were true, it could not vest title to the land in appellees or their grantors, by estoppel or otherwise. The land must belong either to Adolph Wehrman or Frederick Wehrman notwithstanding this alleged fraud, unless the title has been divested by the tax deeds or the judicial proceedings, or by some estoppel, wholly independent of this alleged fraud.

It never was heard of, that because a debtor conveyed away his land to defraud his creditors, such conveyance would vest the title in his creditors by estoppel or otherwise.

In point of fact, however, the evidence does not in any manner sustain this charge of fraud. It is evident that this charge of fraud falls under the familiar rule. It is a charge which must be proven

and which will not be presumed. And there being no direct evidence of fraud, if the circumstances relied upon may be consistent with good faith, no court, either at law or in equity, can hold the charge to be established.

Now, it is neither alleged nor shown that Adolph Wehrman was insolvent. It is not alleged or shown that he did not, at the time of this conveyance, have an abundance of other property liable for the payment of his debts. There is no claim in the bill that he did not have such other property. (Rec. p. 7.)

True, outside of the allegations of the bill, it has been shown that a general execution against him was returned unsatisfied. (Rec. pp. 111–112.)

But it does not even appear that he was a resident of the county in which this execution issued, or that he had his principal estate there, or that he had any property there, except that against which the mortgage was foreclosed. There is, then, neither pleading nor proof that he had not other property in addition to this land, from which the judgment against him might have been collected. There is no reason shown for attempting the alleged fraud.

In addition to this it appears from depositions taken on behalf of appellees, that the appellant, Frederick Wehrman, was a poor man, working as a laborer or farming at the time of the conveyance to him. (Rec. p. 645.)

That he was for a time in the army, during the war of the rebellion, returning home in 1865 or 1866. (Rec. p. 64, bottom.) And it is shown that since he returned from the army he has been addicted to the excessive use of intoxicating liquors. (Rec. 66–68.)

But how does this tend to sustain the charge of fraud?

He was a young man at the time of the conveyance, and undoubtedly anticipated coming to Iowa, making his home on the land and paying for it at the low price at which he purchased it, as many another has succeeded in the purchase of wild lands in Iowa, on a small capital. However, the record shows that at that time O'Brien county was a very wild country. In 1860 the population in that county was only 8; in 1865 it was 30; in 1870 it was 715; in 1875 it was 2,349; in 1880 it was 4,155. (Rec. p. 96.)

Some delay in moving to so new a country was surely pardonable. Meanwhile, the war broke out, the appellant became a soldier, and when he returned home his habits and situation were such as incapacitated him from taking up the land. What of it? Does this show fraud? It is nothing more than what has happened to thousands of men who, with the purest and best of intentions, have failed to carry out the undertakings of their earlier years. Everything that is proven as to Frederick Wehrman is entirely consistent with good faith in his purchase of the land. It is submitted, then, that this charge must be treated as eliminated from the case for all purposes.

VIII.

Of what then does the alleged estoppel in pais against appellant consist?

The only thing from which even knowledge on his part of a void attachment against his land and of a subsequent suit to enforce that void attachment, can be inferred, is the claim that the original notice in the suit to subject the lands to the payment of the so-called Greeley, Gale and Company judgment was served upon him personally in the State of Wisconsin. It is attempted to be made a matter of inference that this apprised him of the proceedings against the land; and from this it is reasoned, that his failure to take some action thereafter, his silence and non-action thereafter, had some injurious effect upon appellees, such as amounts to estoppel.

Appellant by his answer denies that the original notice referred to was served on him. (Rec. p. 50.)

He states, however, that he is "now informed and believes and so admits the fact to be, that in such attempted action to set aside his deed of conveyance an original notice was filed, on which was endorsed an original affidavit of some competent person to this defendant unknown, setting forth that such competent person had duly served such original notice personally upon this defendant, and the said Adolph Wehrman, and Augusta Wehrman, his wife, in Pierce county, in the state of Wisconsin, by reading said original notice to each of them personally and delivering to each of them a true copy thereof." (Rec. 50.)

This admission was designed to obviate the necessity of taking evidence with reference to the lost record; and, probably, admits a sufficient *prima facie* showing of service to warrant the state court, which rendered the decree, in finding that the appellant had been served with original notice in the suit.

But it will be observed that the bill does not set forth *what this original notice contained.* The statute, already printed on page 23 of this argument, does not require the cause of action to be stated with any particularity. The requirement is, "stating generally the nature of the claim, or claims, if more than one, without the need of stating the facts constituting the cause thereof, (as, for example, on account, for a promissory note, for work, for goods sold, for assault and battery, or slander, *for the recovery of* personal or *real property*, or in some other such general way.) And if the action is for money, how much is claimed."

Under this statute, if the alleged original notice had simply informed appellant that the suit set up a lien by plaintiffs on certain lands, without describing them, it would have been sufficient process to authorize the decree, and still would have been no notice whatever to appellant of the real nature of the suit.

It cannot be assumed, then, even if an original notice was served on him, that it in any manner apprized him of the real condition of affairs, or what was really sought.

It may be said that it was sufficient to put him upon inquiry. But estoppels in pais must have some element of fraud or wrong, and cannot be based upon mere failure to act, as an ordinarily prudent man in making inquiries. If all the people who do thoughtless and heedless things were to be deprived of their property on the ground of estoppel, there are but few citizens whose estates would not be in peril.

To be chargeable with knowledge of judicial proceedings which are mere nullities, and to be required to act with reference to them, certainly requires something more tangible than an original notice under the statutes of Iowa, the contents of which are entirely unknown and unproven.

But suppose it were true that appellant had actual knowledge of the judicial nullities and the void tax deeds under which it was attempted to take his property from him. Can it be said that he has lost his estate merely because he did nothing against these nullities until he found that they were actually going to be asserted against him, and possession of his property was taken under them? No case can be found in the books which would sanction this doctrine.

The facts in regard to appellant's alleged non-action, laches, abandonment, acquiescence, must all be gathered from the bill and answer. There is no evidence outside of this showing anything more than the barest negation with reference to action on his part. As to the allegations of the bill, see rec. pp. 12, 13 and 14. And appellant's answer rec. 53, 54, 55, 56, 57, 58, 59 and 60.

The appellant shows that his title was of record. He relied upon it and asserted it. He thus held the legal title to the lands of which the whole world had notice, and this legal title gave him constructive possession, until he was ousted by appellees and others. When they bought the land the record showed that the tax deeds and judicial proceedings, under which their grantors claimed title, were nullities, and they had full notice of this of appellant's title to the land, which was of record, staring them in the face. How, then, is an estoppel made out? He who holds the legal title has seisin and constructive possession of land not actually occupied.

U. S. vs. Arredondo, 6 Pet., 74 .
Barnett vs. Love, 48 Iowa, 103.
Steel vs. Smelting Co., 106 U. S., 456.
Code of Iowa, Sec. 1928.

The mere payment of taxes upon land, while it indicates a claim of ownership to the extent of the payment, does not of itself amount to possession, nor operate as a substitute therefor.

Wood on Limitation of Actions (Edition 1883) 565.
Cornelius vs. Giberson, 2 N. J. L., 1.
Sauber vs. Willing, 10 Watts, (Pa.) 142.
Draper vs. Shoot, 25 Mo., 197.
Reed vs. Field, 15 Vt., 672.
Naglee vs. Albright, 4 Whart., (Pa.) 291.
Chapman vs. Templeton, 52 Mo., 463.
Payne vs. Hutchins, 49 Vt., 314.
Hawkenbvrg vs. Snyder, 2 W. & S., (Pa.) 240.

The same rule is maintained in Iowa. Nothing in the character of adverse possession is shown, either by the fact of the assessment or payment of taxes for a series of years.

Foley vs. Biglow, 56 Iowa, 381.
Brown vs. Painter, 38 Iowa, 456.
Peck vs. Sexton, 41 Iowa, 556.
Sioux City Ry. Co. vs. Wilson, 50 Iowa, 422.
Raymond vs. Morrison, 59 Iowa, 371.

The rule is generally upheld.

Warren vs. Putnam, 63 Wis., 410.

Title to another man's property cannot be acquired by the payment of taxes thereon.

Keane vs. Carmovan, 21 Cal., 303.

"If the title is vested, payment of taxes strengthens neither the title nor right of possession, and on the other hand, the non-payment of taxes would not impair the right or title; for title, when once vested, cannot be divested by abandonment or disclaimer."

Davis vs. Perley, 30 Cal., 636.

And this court said, where the party paid taxes for many years under a mistake of its title:

"If the appellants, owing to their too great confidence in their title, have risked too much it is their misfortune, but they are not, on that account, entitled to have the taxes voluntarily paid by them refunded by the successful party in this suit."

Homestead Co. vs. Valley Railroad Co., 17 Wal., 166.

It would certainly be strange law if an intermedler with property, who pays taxes upon it, could thereby acquire title to the property itself by estoppel or otherwise, after it is settled that he has not even a claim against the owner or against the property to recover back the taxes which he has improvidently paid. Such, it is submitted, is not the law. But it is the law that no title or right is acquired merely by payment of taxes on unoccupied land without actual possession.

Bear Valley Coal Co. vs. Duvart, 95 Pa. St., 72.

Miller vs. Long Island R'y Co., 71 N. Y., 380.
Albert vs. Bradford, 109 Ill., 397.

The reasoning of the court below as to appellant was that he "allowed Carlos S. Greeley to appear as the owner thereof (of the land) for years. He never caused the lands to be assessed to himself, nor did he ever pay or offer to pay, or attempt to pay, any of the taxes assessed against the property. Parties purchasing from Greeley finally commenced improving the property by cultivation of the soil and erecting buildings thereon. For more than twenty-five years Frederick Wehrman remained wholly silent, knowing that by his silence he must of necessity be misleading others, to their injury. In the bill filed in this case it is charged that the transfer to him was without consideration and for fraudulent purposes, yet he does not testify in relation thereto. There is no evidence showing that he ever paid anything for the lands, or that he in fact ever claimed the same as his own property except the bare fact that after the delay of a quarter of a century he brought an action in ejectment to obtain possession of the property." See opinion by Judge Shiras. (Rec. p. 136.)

Some of the matters thus referred to have already been sufficiently discussed and have been shown to have been misapprehended by the court below. As to failure to testify as to the alleged fraudulent transfer of the land to him, it has been pointed out that appellant clearly and explicitly denies the alleged fraud, by his answer which is under oath. This being so, it surely was not requisite for him to take testimony to show that he was not guilty of a fraud, in the absence of any evidence making even a prima facie case against him. Appellees have taken affirmative evidence to show that appellant is a poor man. This is no crime, but it is sufficient to show why he has not been able to make this litigation more burdensome to himself than necessary, by taking evidence to rebut a charge which he has denied under oath and which has not been made out. An explicit denial of fraud charged in a bill, by answer under oath, is sufficient to clear defendants of the alleged fraud in the absence of their further cross examination.

U. S. vs. Budd, 144 U. S., 165.

As to the other matters referred to by the learned judge who tried the case below in this portion of his opinion, it is respectfully submitted that appellant did not "allow Carlos S. Greeley to appear as the owner of the land for years."

On the contrary, the tax title was void upon its face, and the judicial proceedings were nullities and the sale thereunder wholly void, upon the face of the record. Every purchaser, or intending purchaser, who looked at the record, would know this. If they did not look at the record it was their own fault and not the fault of appellant. They would also know from the same record that appellant

held the legal title to the land, was seized of the same and was in constructive possession thereof. Knowing this, can it fairly be said that it was incumbent upon appellant to protect his lands from intruders, intermedlers, and trespassers, by a park of artillery or by other means, in order to have his title recognized and protected by the courts?

Can it be said that it was incumbent upon him to commence proceedings in equity against non-residents to cancel the pretended claims of title to his lands, which were absolutely void upon their face, or to establish by judicial decree a legal title in himself, which without judicial decree was absolute, perfect and unquestionable?

Such a doctrine as this would go to very remarkable lengths in requiring the assertion of undeniable and undoubted legal titles by non-resident land owners, against parties who attempt to divest such titles by proceedings wholly null, void, and of no effect for any purpose whatever.

So of the failure of the appellant to cause the land to be assessed to himself, or to pay taxes thereon. If this is a reason for depriving him of his landed estate, it would make good the claim of every intruder, intermedler, and wrongful claimant, who knows himself that he has no title whatever, as it must be said that all of these adverse claimants to appellant knew all of the time, if he still persists in paying taxes upon land which he knows he does not own.

Such a doctrine would be welcomed by speculators in tax deeds who attempt to secure acres for cents by reason of the poverty and misfortune of the real owners of landed estates, but it would be a dangerous doctrine to be upheld by the courts and would impose burdens heretofore unheard of, upon non-resident land owners throughout the newer portions of the country.

Again as to the failure of appellant to pay his taxes, the public authorities might complain; but why should intermedlers who know they have no right or authority and who know that they pay the taxes as volunteers at their own peril, be permitted to found a complaint on this fact against the real owner? *Non constat* that he would not have paid the taxes willingly and gladly even if tardily, if these intruders had not done so, and he had had the opportunity of paying himself, as fast as his poverty would permit, and in time to prevent any question being raised as to his landed estate, so far as mere nonpayment was concerned.

The court below, indeed, seemed to think that appellant's lands ought to be declared forfeit because he, a non-resident, did not go to Iowa, or have an agent in Iowa to see to it that the lands *were assessed to him personally*. In the opinion overruling the demurrer, His Honor Judge Shiras said:

"Under the statutes of Iowa it is made the duty of owners of realty in the state to see that the same is properly assessed, and to pay the taxes thereon. Code of Iowa, Sec. 852. According to the averments of the bill, Wehrman never paid

any of the taxes on the land nor did he ever see to it that the lands were listed in his name as owner and properly assessed."

It is submitted that if Wehrman had had the lands assessed in his own name, he would have given no additional notice to Greeley, nor to appellees, of his rights to the property. A tax list is not, under any statute, constructive notice that one claims to be the owner of lands, while the record of deeds is; and appellant's title appeared of record. It is evident, then, that the parties seeking to deprive appellant of his land can make no complaint and found no element of estoppel upon the fact that they caused the land to be assessed in their own names, or the fact that Wehrman did not cause the land to be assessed in his name.

Even as to the duties of Wehrman to the public, with reference to the listing and assessing of his lands, it is submitted that the statutes of Iowa did not warrant the suggestions of the learned judge who wrote the opinion in the court below. Section 852 of the Code of Iowa, referred to by the learned judge, being Section 753 of the Revision of Iowa, and in force in Iowa in 1860, reads as follows:

"In all cases where real property, subject to taxation, *shall not have been assessed* by the township assessor or other proper officer, *the owner* thereof, by himself or his agent, *shall have the same properly assessed* by the treasurer, and pay the taxes there n; and no failure of the owner to have such property assessed, or to have the errors in the assessment corrected, and no irregularities, error or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real property which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided for by this title, had the assessment of such property been, in all respects, regular and valid "

It will be observed that this section only requires the land owner to have his real property assessd in cases where it "shall not have been assessed by the township assessor, or other proper officer." And there is no claim or pretence that the land in controversy was not so assessed during all the years that appellant has owned it. Consequently there was no duty for him to discharge under this section.

Other sections expressly authorize land to be assessed to unknown owners. And it may be remarked that these provisions of the statute were in force when a very large part of the real estate in Iowa was owned by non-residents, and it was entirely impracticable to undertake to assess such lands to the real owners. Thus, it is provided:

"*Every inhabitant of this State*, of full age and sound mind shall assist the assessor in listing all property subject to taxation in this state of which he is the owner."

Code, Sec. 803; Rev. Sec. 714.

"The assessor shall list every person in his township, *and assess all the property, personal and real*, therein, except such as is heretofore specifically exempted; and any person who shall refuse to assist in making out a list of his property, or of any property which he is by law required to assist in listing, or who shall refuse to

make the oath required by the next section, shall forfeit the sum of one hundred dollars, to be recovered in the name of the county, for the use of common schools therein; and the assessor shall assess such person according to the best information he can get."

Code of Iowa 1873, Sec. 823; Revision 1860, Sec. 734.

These sections clearly refer only to resident property owners who are personally subject to the jurisdiction of the assessor. Then, to reach non-resident and unknown owners of land, it is provided:

"*When the name of the owner of any real estate is unknown*, it shall be lawful to assess such real estate without connecting therewith any name, but inscribing at the head of the page the words, 'owners unknown,' and such property, whether lands or town lots, shall be listed as near as practicable, in the order of the numbers thereof; and no one description shall comprise more than one town lot, or more than the sixteenth part of a section or other smallest subdivision of the land, according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance with such surveys."

Code of Iowa, 1873, Sec. 826; Revision of 1860, Sec. 737.

"After the equalization in June, hereinbefore provided, and before the first Monday in November, the county auditor shall transcribe the assessments of the several townships into a suitable book to be provided at the expense of the county, properly ruled and headed with distinct columns, in which shall be entered the names of tax payers, descriptions of lands, number of acres and value, number of town lots and value, value of personal property, and each description of tax, with a column for polls and one for payments."

Code of 1873, Sec. 837; Revision 1860, Sec. 745.

"*The county auditor may correct any clerical or other error in the assessment or tax book*, and when such correction, affecting the amount of tax, is made after the books shall have passed into the hands of the treasurer, he shall charge the treasurer with all sums added to the several taxes, and credit him with all the deductions therefrom and report the same to the supervisors."

Code of 1873, 841; Revision of 1860, Sec. 747.

"The county auditor shall make an entry upon the tax list showing what it is, and for what county and year it is, and then, shall deliver to the county treasurer, on or before the thirty-first day of December, taking his receipt therefor; and such list shall be full and sufficient authority for the county treasurer to collect taxes thereon levied. But no informality therein and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, or sales, or other proceedings for the collection of taxes under this title."

Code of 1873, Sec. 843; Revision of 1860, Sec. 874.

"The treasurer, on receiving the tax book each year, shall enter upon the same, in separate columns, opposite each parcel of real property or person's name, on which, or against whom any tax remains unpaid for either of the preceding years, the year or years for which such delinquent tax so remains due and unpaid. And any sale for the whole or any part of such delinquent tax, not so entered, shall be invalid."

Code of 1873, Sec. 845; Revision of 1860, Sec. 750.

"The treasurer, after making the above entry, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books of previous years."

Code of 1873, Sec. 846; Revision of 1860, Sec. 751.

"*The county treasurer shall assess any real property subject to taxation, which may have been omitted by the assessor, board of equalization or county auditor*, and collect taxes thereon, and in such cases he is required to note, opposite the tract or lot assessed, the words, 'by treasurer;' provided, that such assessment shall be made within two years after the tax list shall have been delivered to him for collection, and not afterwards."

Code of 1873, Sec. 851; Revision of 1860, Sec. 752.

It is only when under these various provisions, real estate has not been assessed by any of the various officers, *to unknown owners, or otherwise*, that it becomes the duty of the owner, under the section cited by the court below, to see that his real property is assessed. And it admits of serious doubt whether, even then, a land owner, residing in Illinois, New York or in Maine, would be required to lose real estate through void judicial proceedings and void tax deeds, if he did not, in person or by agent, see that his land was assessed in some form every year. Be this as it may, the record shows that the lands in controversy were assessed every year, and it follows that appellant had neither public nor private duty to perform in that behalf. Under these provisions it is held that an error of the assessor in assessing land to unknown owners is cured by the statute.

Corning Town Land Co. vs. Davis, 44 Iowa, 632.

It is certain that neither public nor private interests were affected in any manner by the failure of appellant to have the lands assessed in his own name, and it is submitted, that no possible element of estoppel can be founded upon this circumstance.

IX.

And how can it be said that "Frederick Wehrman remained wholly silent, knowing that by his silence he must, of necessity, be misleading others to their injury?"

Must it not be said that Carlos S. Greeley knew that his tax title was void, and that his sheriff's deed was void? How, then, did, or could Frederick Wehrman mislead him to his injury? Having no title himself, he knew that Frederick Wehrman held the legal title and was constructively in possession of the land. In law and in equity he was not misled, but simply persisted in his injurious intermedling with an estate as to which he had no semblance of right.

So as to the purchasers under Greeley. They were not misled. Everything was of record showing Greeley's pretense of title to be void. That, after securing a sheriff's deed, he should have attempted to patch up his pretense of title by a tax deed, was a suspicious circumstance of itself. Any purchaser was bound to look at the record, and, looking at the record, knowing the facts, he could not be misled and could not fail to know that appellant, and not Carlos S. Greeley, held the title.

It will be observed that no affirmative personal knowledge or personal action on the part of appellant is pointed out in the opinion, or shown by the evidence in the case.

When in proceedings in *rem*, the property proceeded against is not, in fact, seized, when the judgment is a nullity, when the process is void, all acts and titles thereunder are absolute nullities, whenever and wherever assailed.

Pike vs. Wassell, 94 U. S., 712.
Mitchell vs. St. Maxent's Lessee, 4 Wall., 244.
Galpin vs. Page, 18 Wall., 366.
Gantley vs. Ewing, 3 How., 707.
Bregnardello vs. Gray, 1 Wall., 627.
Gaines vs. De La Croix, 6 Wall., 719.
Erwin vs Lowry, 7 How., 172.
Schiver vs. Lyman, 2 How., 43.
Minn. Co. vs. Ry. Co., 2 Wall., 609.
Hatcher vs. Powell, 6 Wheaton, 125.

"A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can obtain. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale, by virtue of its authority, finds himself without title and without redress. The first and most material inquiry in relation to a judgment or decree, then, is in reference to its validity. For, if it be null, no action upon the part of the plaintiff, no inaction upon the part of the defendant, *no resulting equity in the hands of third persons*, no power residing in any legislative or other department of the government, can invest it with any of the elements of power or of vitality. This inquiry is to be prosecuted only by an investigation of jurisdictional facts, upon whose real or assumed existence every valid judgment must stand."

Freeman on Judgments, Sec. 117.

It has already been pointed out that even where land is attached in a proceeding in *rem* under the statutes of Iowa, if the court shall render judgment in personam and the land is then sold on execution, the judgment and sale are void.

Smith vs. Griffin, 59 Iowa, 410.
Lutz vs. Kelly, 47 Iowa, 307.
Cassidy vs. Woodward, 77 Iowa, 354.

The same is true of foreclosure of a mortgage by proceedings in *rem*. A judgment in personam is void and sale of the mortgaged premises thereunder, a nullity.

Lutz vs. Kelly, 47 Iowa, 307.

It appeared, upon the face of the judgment itself, in the law action against Adolph Wehrman, that it was a judgment in personam, pure and simple. The land attached was not ordered to be sold. On the contrary, the judgment declared:

"That the property mentioned and described *in* the writ of attachment issued in this behalf should be sold to satisfy the same." (Rec., p. 25.)

This was apt language to authorize the sale of property seized by specific attachment and described in the writ itself under the statutes of Iowa. Such statutes provided at the date of the rendition of this judgment:

"In an action by a vendor of property fraudulently purchased, to vacate a contract, and for the restoration of the property or compensation therefor, where the petition shows such fraudulent purchase of property, and the amount of plaintiff's claim, and is verified by oath, an attachment against the property may be granted."

Revision 1860, Sec. 3226, Code 1873, Sec. 3001.

"*The attachment shall describe the specific property* against which it is issued, and shall have endorsed upon it the direction of the court or judge as to the disposition to be made of the attached property. It shall be directed, executed and returned as other attachments."

Revision 1860, Sec. 3230; Code 1873, Sec. 3003.

"The court may in any of the cases mentioned under this head of specific attachments, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment or to retain the attached property."

Revision 1860, Sec. 3231; Code 1873, Sec. 3004.

"If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply in satisfaction thereof the money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order a sale by the sheriff of any other attached property which may be under his control."

Revision 1860, Sec. 3232; Code 1873, Sec. 3011.

It will be seen that the court did not order a sale of the attached property. It rendered a judgment in personam and ordered the property *mentioned and described in the writ* of attachment to be sold. This assumed a specific attachment of property described in the writ itself, as provided by the statute in all such cases. It had no reference to the property which the sheriff had attempted to seize by virtue of the void writ. And this judgment in personam was followed by a sale on general execution. Showing that it was not understood or claimed that the judgment authorized a special execution to sell the property which the sheriff had attempted to seize, but amounted to nothing more than a judgment in personam, to be enforced by general execution.

All of these defects appeared upon the face of the record, as well as the original defect of a pretended writ not under the seal of the court. It is difficult to imagine a more patent nullity than the judicial proceeding which stared all persons in the face, who attempted to secure title to appellant's land thereunder. There is no such thing as a bona fide purchaser of title under a void judgment. Where a judicial proceeding is a nullity upon its face, knowledge thereof is as

conclusively imputed to a remote grantee of a purchaser thereunder as it is to the original purchaser himself.

Singer vs. Scheible, (Ind.), 10 N. E. Rep., 616.
Williamson vs. Presbyterian Congregation, 8 How., 505.
Gantley vs. Ewing, 3 How., 707.
Williamson vs. Ball, 8 How., 566.
Gaines vs. New Orleans, 6 Wall., 642.
Brant vs. Foster, 93 U. S., 326.
Smith vs. Wortham, 1 S. E. Rep. (Va.), 541.

"The doctrine of estoppel cannot be invoked by one who at the time his improvements were made was acquainted with the true character of his own title, or the fact that he had none."

Steel vs. Smelting Co., 106 U. S., 456.

One claiming the benefit of an estoppel must not only show that he has been misled by the silence of his adversary, but he must expressly negative knowledge on his own part of the true state of facts.

R'y Co. vs. Du Bois, 12 Wall., 64.
Fenshaw vs. Bissell, 18 Wall., 271.

"The equitable rule as to the effect of a person lying by and allowing another to expend money on his property does not apply where the money is expended with knowledge of the real state of the title."

2 Story Eq. Jur., Sec. 1537.
Reney vs. Younge, 2 De G. & J., 136.

The doctrine of caveat emptor applies to judicial sales, and as to the doctrine of estoppel:

"It is essential for its application with respect to the title of real property, that the party claiming to have been influenced by the conduct or declarations of another to his injury, was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties or both have the same means of ascertaining the truth, there can be no estoppel. Crest vs. Jack, 3 Watts., 240. Knouff vs. Thompson, 4 Harris, 361 Tested by these views the defense of estoppel set up in this case entirely fails."

Brant vs. Foster, 93 U. S., 326.

The cases cited by this court in its opinion *supra* fully sustain the doctrine of the opinion. In one of the cases so cited it was held that the party claiming the benefit of the estoppel might have known of the title of his adversary by ordinary diligence. The court said:

"The law imputes to him the knowledge of such facts. Such an imputation rebuts the inference of constructive fraud to be implied merely from silence. If Knouff remained in ignorance, it was wilful on his part. and he is without equity in his defense" (of estoppel).

The court further said:

"The party who has placed his written title on record, has given the notice which every person is bound to know and respect. * * * The distinction between the omission to give notice and encouragement by positive acts, is recognized and assumed in the authorities cited. * * * Equity will not on the mere ground of silence, relieve one who is perfectly acquainted with his right or has the means of becoming so, and yet wilfully undertakes to proceed in expending on the lands of another, without obtaining or asking his consent."

Knouff vs. Thompson, 4 Harris (16 Pa. St.), 362.

In another case cited by this court, the record of the title of the party sought to be estopped was held to be such notice to the party claiming the benefit of the estoppel as to deprive him of the element of having parted with his money on the faith of the alleged silence of the land owner. The owner was present at a sheriff's sale of his land, and gave no notice of his interest. His title being of record, the court said:

"But as has been seen, if Epley had notice of David Withrow's title he could not be defrauded by mere silence, and such indeed was the view of the court below, for they charged the jury in effect, that if Epley had seen the deed on record there was no estoppel. The deed was on record and being there it was constructive notice to all the world. All the authorities agree that there is no difference in legal effect between actual and constructive notice. In the judgment of the law, therefore, Peter Epley knew at the time he purchased, that David Withrow was the owner of one-half the land. Indeed, he could not have seen the deed of Samuel without being apprized of David's title. But if he had not actual knowledge as well as constructive, it was due to his own negligence and folly in not examining the record, as every purchaser at a sheriff's sale is bound to do, and he cannot plead an estoppel upon his own default."

The court further said:

"If one suffers another to purchase and expend money upon a tract of land and knows that that other has a mistaken opinion respecting the title to it and does not make known his claim, he shall not afterwards be permitted to set up a claim to that land against the purchaser. His silence then becomes a fraud; but silence without such knowledge works no estoppel. It is only when silence becomes a fraud that it postpones. (Citing authorities.)

"If the truth be known to both parties or if they have equal means of knowledge there can be no estoppel. Accordingly it has been held that one is not relieved who had the means of becoming acquainted with the extent of his rights. (Citing authorities.)

"And in Knouff vs. Thompson, 4 Harris, 361, it was ruled that silence does not estop when the party's deed is of record. It should never be forgotten that there is a wide difference between silence and encouragement."

Hill vs. Epley, 31 Pa. St., 334.

In another case of alleged estoppel the Supreme Court of Pennsylvania said:

"If the bank or water company during the time they held the land, encouraged the defendant to purchase the title of Livingston, and encouraged him to make large improvements on the faith of that title, there might be something in it. Not giving actual notice of their title, even if they knew of defendant's purchase, when they had put their title on record and thus given the notice which the law requires, could not prejudice them."

Goundie vs. Water Co., 7 Pa. St., 233.

In a case where the party holding a mortgage on land duly recorded was present at a sheriff's sale of the land on a judgment rendered after his mortgage was recorded, and allowed the sale to proceed and a purchaser to buy the land without giving express notice of his mortgage, the Supreme Court of Ohio said of the purchaser at such sheriff's sale, who claimed an estoppel:

"He purchased at a judicial sale as to which the maxim caveat emptor applies. The record of the mortgage was a standing and accessible notice to him and to all the world, and it seems to us that the mortgagee had as good right to presume the bidders to be informed of his lien as the purchaser had to presume that he would make proclamation of the recorded mortgage. * * * There is no evidence beyond the mere fact of silence, of any actual fraud or deceit on the part of the mortgagee, and in such case, the mortgage being duly recorded, we think the principle does not apply."

Fisher's Ex. vs. Mossman, 11 O. St., 47.

The Supreme Court of Iowa maintains the same doctrine, and has twice held:

"That the doctrine of estoppel will not apply to one whose title is properly recorded, because he does not take affirmative action to defeat a public sale of the property. The doctrine of caveat emptor applies to the purchaser at such sale."

Quinn vs. Turner, 18 Iowa, 1.
Jones vs. Brandt, 59 Iowa, 332.

While upon the Supreme bench of California, it was held by Mr. Justice Field that a necessary element of an estoppel of this character is that the party claiming the estoppel "was not only destitute of all knowledge of the true state of the title, but of the means of acquiring knowledge."

Boggs vs. Mining Co., 14 Cal., 279.
Martin vs. Zellerback, 38 Cal., 300.

Undeniably, then, there is no estoppel in the case at bar, because the appellees had the fullest knowledge of appellant's title and of their own lack of title, and of the nullities upon which their own claim and pretense of title was based; or they had the means of such knowledge from the record staring them in the face. If they chose to recklessly embark upon the enterprise of trying to seize and confiscate appellant's title, without color of law, under such circumstances, they are the last ones in the world who can ask to be protected upon the ground of an equitable estoppel, as against their adversary.

X.

Not only do the authorities hold that one cannot avail himself of an estoppel where he had knowledge of the facts, but the doctrine is equally well established, especially by the decisions of this court, that in order to forfeit a land title on the ground of estoppel the conduct

of the party estopped must have amounted to a fraud upon his adversary. In a case already referred to it was held by Mr. Justice Field, now of this court, that in order to estop a party as to a landed estate by his conduct, admissions or declarations, the following are essential requisites:

It must appear (1) that the party making his admission by his declaration or conduct was apprised of the true state of his own title; (2) that he made the admission *with an express intention to deceive, or with such careless and culpable negligence as to amount to constructive fraud;* (3) *that the other party was not only destitute of all knowledge of the true state of the title, but of all means of acquiring such knowledge;* (4) that he relied directly upon such admission, and will be injured by allowing the truth to be disapproved.

Boggs vs. Mining Co., 14 Cal., 279.
And see *Martin vs. Zellerbach.* 38 Cal., 300.

And this was the precise test adopted by this court as to equitable estoppel, touching landed estates in a case where the opinion was also by Mr. Justice Field:

"It is difficult to see where the doctrine of equitable estoppel comes in here. For the application of that doctrine there must generally be some intended deceit in the conduct or declarations of the party to be estopped, or such gross negligence on his part as amounts to constructive fraud by which another has been misled to his injury * * * The element of fraud is essential either in the intention of the party to be estopped or in the effect of the evidence which he sets up. It would seem that in the enforcement of an estoppel of this character with respect to the title of property such as will prevent a party from asserting his legal rights and the effect of which will be to transfer the enjoyment of the property to another, *the intention to deceive and mislead or negligence so gross as to be culpable should be clearly established.*"

Brant vs. Foster, 93 U. S., 335.

A learned commentator, accepting the doctrine of this rule, as to estoppel, touching landed estates, says:

"It applies to one who denies his own title or incumbrance when inquired of by another who is about to purchase the land or to loan money upon its security; to one who *knowingly* suffers another to deal with the land as though it were his own; to one who *knowingly* suffers another to expend money in improvements without giving notice of his own claim, and the like This equity being merely an instance of fraud *requires intentional deceit, or at least that gross negligence which is evidence of an intention to deceive.* In the language of a most recent decision to preclude the owner of land from asserting his legal title or interest under such circumstances, 'there must be shown actual fraud or fault, or negligence equivalent to fraud, on his part, in concealing his title; or that he was silent when the circumstances would impel an honest man to speak; or such actual intervention on his part as in Storrs vs Baker, so as to render it just that as between him and the party acting upon his suggestion, he should bear the loss.' What is the reason of this rule? It is accurately explained in the same decision. While the owner of land may by his own acts in *pais* preclude himself from asserting his legal title, 'it is obvious that the doctrine should be carefully and sparingly applied and only on the disclosure of clear and satisfactory grounds of justice and equity. It is opposed to the letter of the statute of frauds; and it would greatly tend to the insecurity of titles if they were allowed to be affected by parol evidence of light or doubtful character.'"

2 Pomeroy Eq. Jur., Sec. 807, citing *Trenton Banking Co. vs. Sherman*, 24 Albany L. J., 390, and other authorities. including *Storrs vs. Baker*, 6 Johnson's Ch., 166,

And it is further pointed out by the same learned author, insisting upon the necessity of fraud as an element of estoppel of this character, that:

"The truth concerning these material facts must be unknown to the party claiming the benefit of the estoppel not only at the time of the conduct, which amounts to a representation or concealment, but also at the time when that conduct is acted upon. If, at the time when he acted, such party had knowledge of the truth or had means by which, with reasonable dilligence, he could acquire the knowledge so that it would be negligence on his part to remain ignorant, by not using those means, he cannot claim to have been misled by relying upon the representation or concealment."

2 Pom. Eq. Jur., Sec. 810.

This is simply another method of stating that fraud must exist or the estoppel is not made out.

Finally this author says again:

"The most striking instance of the estoppel recognized by courts of equity, is that already described in a former paragraph, wherein, by intentional misrepresentation, misleading conduct, or wrongful concealment a party may preclude himself from asserting his legal title to land, or from enforcing an incumbrance on, or maintaining an interest in real estate. * * * Fraud, actual or constructive, is the essential and central element."

2 Pomeroy Eq. Jur., Sec. 821. Referring to Sec. 807 already quoted from above.

Several of the cases cited in Division IX of this argument recognize the difference between mere silence where one's title is of record and encouragement which would amount to a fraud.

Story stated the rule thus:

"In order, however, to justify the application of this cogent moral principle it is indespensable that the party so standing by and concealing his rights should be fully apprised of them and should by his conduct or gross negligence, *encourage* or influence the purchaser; for if he is wholly ignorant of his rights, or the purchaser knows them, or if his act, or misrepresentation or negligence do not mislead or in any manner affect the transaction, there can be no just inference of actual or constructive fraud on his part. For a right can be lost or forfeited only by such conduct as would make it fraudulent and against conscience to assert it."

1 Story Eq. Jur., Sec. 386.

"This doctrine of estoppel in pais or equitable estoppel, is based upon a fraudulent purpose and a fraudulent result. If, therefore, the element of fraud is wanting, there is no estoppel. As if both parties were equally conusant of the facts and the declaration or silence of one had produced no change in the conduct of the other, he acting solely upon his own judgment. There must be deception and change of conduct in consequence in order to estop a party from showing the truth."

2 Story's Eq. Jr., Sec. 1543.

Very strong cases maintaining this principle are:

Viele vs. Judson, 82 N. Y., 40.
Hamlin vs. Seers, 82 N. Y., 331.
Quhl vs. Mayor, etc., 23 N. J. Eq., 84.

Mere passive silence is not enough when the persons sought to be estopped is not present at the transaction.

Bank vs. Lee, 13 Pet., 118.

In a case already referred to this court said as to estoppel in pais:

"It is often applied where one holding an estate stands by and sees another erecting improvements on it in the belief that he has the title, or an interest in it, and does not interfere to prevent the work or inform the party of his own title. There is, in such conduct, a manifest intention to deceive, or such gross negligence as to amount to constructive fraud."

Steel vs. St. Louis, etc. Co., 106 U. S., 456.
And see *Drexel vs. Bernay*, 122 U. S., 251.

"If the element of fraud is wanting there is no estoppel; as if both parties were equally cognizant of the fact and the declaration or silence of the one party produced no change in the conduct of the other, he acting solely upon his own judgment. There must be deception and change of conduct in consequence in order to estop a party from showing the truth."

Knapp vs. Jones, 143 Ill., 382.
Davidson vs. Young, 38 Ill., 152.
To the same effect, *Chillis vs. Koble*, (Kan). 15 Pac. Rep., 505.
And specially *Kingman vs. Graham*, 51 Wis., 232.
Newell on Ejectment, p. 669.

It must be apparent that appellees have wholly failed to establish the most essential elements which are requisite to make out an estoppel against appellant.

XI.

There remains to be considered some vague and loose claims as to alleged *abandonment* of the land by Wehrman, or *aquiescence* on his part in the claims of his adversaries or alleged *laches*.

The doctrine of laches can have no application to this case. If Wehrman needed the assistance of a court of equity to overset the judicial nullities or the void tax title, it might perhaps be urged that he should have applied to such court speedily before new rights intervened. But he needed no decree of a court of equity as to the void semblance of title set up against him. He held the full, clear and absolute legal title; he held constructive possession of the land until tresspassers and intruders dissiezed him. Then within apt time he applied to a court of law to enforce his legal title.

Under these circumstances, the notion that he can be dragged

into a court of equity nolens volens, in order to enforce the doctrine of laches against him, is certainly a novel invention. If such a rule can be established it will be an amazing spectacle to see courts of equity stripping a citizen of his legal rights and titles to landed estates, not on the ground that he has neglected to ask assistance from them with due dilligence and promptness, nor on the ground that he needs any assistance from them, but because his adversary needs their assistance and is entitled at his option to play ducks and drakes with the law, overturn and nullify the statutes of limitations, and put it in the power of the chancellor to bar actions at law without reference to the prescribed statutory periods. It is safe to assert that this court will never make this novel use of the doctrine of laches.

This startling theory seems to be a paraphrase of the performance of that ancient who, having stripped a fowl of its feathers, threw it into the assembly, shouting "Here is one of Plato's men." So this novel theory seems to be that courts of equity may strip the American citizen of all of his legal rights and throw him into the judicial arena, shouting "Here is one of equity's men."

An action at law is not barred, because an equitable suit touching the same rights might be by laches.

Jackson vs. Holbrook, 32 N. W. Rep., 852.

As to the alleged abandonment of title by appellant, a standard text writer, after devoting a chapter to this question, comes to the following conclusion:

"It is probably, therefore, not too strong a conclusion, to assert that in no case can a man lose his title to a freehold in land by any act or oral declaration of abandonment, unless it comes within the catagory of estoppel, or is followed by such a possession by the party claiming title thereto in his stead, as brings the case within the statute of limitations."

3 Washburn Real Property, (3rd Ed.) 65.

Another text writer says:

"The legal title properly vested, can only be divested by abandonment when the circumstances of the case are sufficient to raise an estoppel or where the possession is acquired by one in consequence of the abandonment and held by him under claim of title for the period of limitation. * * * But where the abandonment is not accompanied by circumstances of estoppel or limitation, no matter how formal the abandonment was, if it falls short of a legal deed or conveyance, it has no effect whatever upon the legal title. The owner may afterwards re-enter and eject any one who may have entered into possession in reliance upon the abandonment."

Teideman Real Property, Sec. 739.

No more acquiescence than abandonment is shown. The rule in regard to acquiescence is thus stated in Wood on Limitations:

Sec. 61. "Effect of Acquiescence. *Courts of equity* will also refuse to grant relief where a person has acquisced in the exercise of a right by another, under such circumstances that he cannot equitably dispute the right, although his acquiescence has not existed for the statutory period. Lord Eldon (Dann vs. Spurrier, 7 Ves.

231) gives expression to the rule in such cases, thus: 'This court,' says he, 'will not permit a man, knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title, and the circumstance of looking on is in many cases as strong as using terms of encouragement, a lessor knowing and permitting those acts which the lessee would not have done, and the other must conceive he would not have done, but upon an expectation that the lessor would not throw any objection in the way of his employment.' In another case, (Duke of Leeds vs. Amherst, 2 Phillips, 123.) Lord Cottenham said: If a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the matter is in progress, he cannot afterwards complain. This,' says he 'is the proper sense of the word 'acquiescence.' But a person who has not complete knowledge of the facts cannot be said to acquiesce" (Marker vs. Marker, 9 Hare, 16.) 'I do not see,' says Turner, L. J. (Cooper vs. Greeene, 3 D. G , F. & J., 58) 'how a man can be said to have acquiesced in that he does not know; and, in cases of this sort, I think that acquiescence implies full knowledge, for I take the rule to be quite settled that a *cestui que* trust cannot be bound by acquiescence, unless he has been fully informed of his rights and of all the material facts and circumstances of the case.'"

Sec. 62. "Distinction between Laches and Acquiescence. While the words 'laches' and 'acquiescence' are often used as similar in meaning, the distinction in their import is both great and important. Laches import a merely passive, while acquiescence implies active assent; and while, where there is no statutory limitation applicable to the case, courts of equity would discourage laches and refuse relief after great and unexplained delay, yet, where there is such a statutory limitation, they will not anticipate it as they may where acquiescence has existed."

"Laches amount, in fact, only to that inferior species of acquiescence described in the following terms by Kindersley, V. C.: (Rochdale Canal Co. vs. King, 2 Sim. N.s., 89.) 'Mere acquiescence (if by acquiescence is to be understood only abstaining from legal proceedings) is important; where one party invades the rights of another, that other does not in general deprive himself of the right of seeking redress, merely because he remains passive; unless, indeed, he continues inactive so long as to bring the case within the purview of the statute of limitations.'"

And this court has said:

"Acquiescence and waiver are always questions of fact There can be neither without knowledge. The terms import this foundation for such action. One cannot waive or acquiesce in a wrong, while ignorant that it has been committed. Current suspicion and rumor are not enough. There must be knowledge of the facts which will enable the party to take effectual action."

Pence vs. Langdon, 99 U. S., 581.

A text writer, already quoted from, lays down the rule as follows:

"Acquiescence in the wrongful conduct of another by which one's rights are invaded, may often operate, upon the principles of and in analogy to estoppel, to preclude the injured party from obtaining many *distinctively equitable remedies* to which he would otherwise be entitled. *This form of quasi estoppel does not cut off the party's title nor his remedy at law; it simply bars his right to equitable relief*, and leaves him to his legal action alone. In order that this effect may be produced, the acquiescence must be with knowledge of the wrongful acts themselves, and of their injurious consequences; it must be voluntary, not the result of accident, nor of causes rendering it a physical, legal or moral necessity; and it must last for an unreasonable length of time, so that it will be inequitable, even to the wrongdoer, to enforce *the peculiar remedies of equity* against him, after he has been suffered to go on unmolested, and his conduct apparently acquiesced in. It follows that what will amount to a sufficient acquiescence in any particular case, must largely depend upon its own special circumstances. The equitable remedy to which this quasi estoppel by acquiescence most frequently applies is that of injunction, preliminary or final, when sought by a proprietor to restrain a defendant from interference with easements, from committing nuisances, from trespasses, or other like acts in derogation of the plaintiff's proprietory rights This effect of delay is sub-

ject to the important limitation that *it is properly confined to claims for purely equitable remedies to which the party has no strict legal right.*"

2 Pom. Eq. Jr., Sec. 817.

It must be conceded, under these authorities, that not the slightest case of acquiescence with knowledge on his part of appellees' purchase or improvements is made out against appellant, even as to equitable remedies if he needed them. The case as a whole falls within a decision of this court as to asserting titles to land by bill in equity:

"In order to maintain a bill in equity in any case the complainant must have a clear, legal, and equitable title to land, connected with possession Where the complainant has no title, or a doubtful title, he cannot have relief. He must clearly show the validity of his own title and the invalidity of his opponent's. The proper forum to try titles to land is a court of law, and this jurisdiction cannot be withdrawn at pleasure and transferred to a court of equity, under a pretense of removing clouds from titles."

Phelps vs. Harris, 101 U. S., 374.

It being shown that appellant holds the strict legal title to the land, he can only be divested of that title by evidence or averment which makes a clear, cogent and convincing case. This is an elementary rule of law as to divesting any citizen of his title to a landed estate.

2 Devlin on Deeds, Sec. 1183.
Buena Vista County vs. Ry. Co., 112 U. S., 176.
Baldwin vs. Stark, 107 U. S., 467.
Lee vs. Johnson, 116 U. S., 49.

No such title to equitable relief is established by appellees in the suit at bar.

XII.

Nor is any hardship or to be loss shown or presumed, either as to Carlos S. Greeley or his grantees. Greeley's so-called judgment against Adolph Wehrman being void and his sheriff's deed thereunder being void, there was no merger or satisfaction of his debt, and he was at liberty from the very inception of the proeeedings under examination in this case to pursue his debtor and collect his debt by any appropriate method or procedure.

Clay vs. Freeman, 118 U. S., 97.

As to appellees in this case, they are entitled to recover from Greeley the purchase money paid to him, with six per cent interest. Under the statutes of Iowa they are entitled to be reimbursed for their improvements before they can be ejected from the land in controversy. And if appellant should refuse to pay them for their im-

provements when the value thereof is assessed by a jury, they will become tenants in common with appellant in ownership of the land, in the proportion that the value of their improvements bears to the value of the land at the time they entered upon it and before it was improved.

Code of Iowa, Secs. 1976 to 1986.

It is submitted that no ground is shown for depriving appellant of his title to the real estate in controversy by the decree of a court of equity.

CHAS. A. CLARK,
For Appellant.

Office Supreme Court U. S.
FILED.
OCT 25 1894
JAMES H. McKENNEY,
CLERK.

APPELLEES' BRIEF.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

NO. ~~202~~ 45

FREDERICK WEHRMAN, APPELLANT

vs.

T. B. CONKLIN AND E. F. CONKLIN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

MR. CHARLES A. CLARK, Solicitor for Appellant.
MR. ERNEST C. HERRICK, Solicitor for Appellees.

APPELLEES' BRIEF.

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STATEMENT OF CASE.

Most of the averments of the bill are admitted. No evidence was taken on behalf of appellant. The bill waives answer under oath, hence the answer is not evidence for appellant. Record, 15.

FACTS PUT IN ISSUE.

1. Date of indebtedness to Greeley, Gale & Co. by Adolph Wehrman.

This is shown by the copy of the original complaint, which shows the date of the notes April 12, 1858, and judgment on same. Pages 123–4 of record, and stipulation on page 122. These dates show that the indebtedness was contracted prior to December 17, 1859, the date of the conveyance by Adolph Wehrman to appellant.

2. Appointment of first term of court in O'Brien county. As to this, the records are shown to be lost, and the legal presumption is sufficient. in the absence of any proof to the contrary. The fact that the correct date of the term is stated in the notice actually served on Adolph Wehrman in the attachment suit, exhibit D, page 12, which service is admitted in the answer, page 45 of record, also shows that the order for the term must have been made prior to that date, for the true date could not otherwise have been known.

3. The failure to provide a seal for the county. The only evidence of this are the statements of the clerk on the writ of attachment, and the transcript of the record on the change of venue to Woodbury county, and these *acts* of the clerk. Pages 19 and 20 of record.

4. The loss of the records in the attachment and equity suits. This is proven by the evidence of Peck, page 85; Turner, page 88; and Walter page 96 of record.

5. Service of the notice of the chancery case to set aside the conveyance is denied; but it is admitted that a proper original notice was filed in said cause, and that said notice had an proper affidavit of service of the same upon all

the defendants therein endorsed thereon and that the same was made by a competent person "and which said affidavit was sufficient in form and substance to show personal service upon each of the defendants to said attempted action in the county of Pierce and state of Wisconsin." Record, page 50.

By section 2823 of the Revision of 1860 of Iowa it is provided

"If service be made without the state or by one not such officer within the state, the return may be proven by the affidavit of him making the same, certified by one empowered to administer oaths."

That the service was actually made is also corroborated by the admitted fact of service of the notice in the attachment suit; by the failure of appellant to show by his own evidence that he was not served, or that the other defendants were not; by the subsequent conduct of appellant with respect to the land, and lastly, by the presumption that obtains in favor of the decree of the court, reciting personal service.

6. Value of the lands at the time of the judicial sale. This is proven by the evidence of Corbett, page 84 of record, to be 75 cents per acre, and Lebourveau, page 73 to be 50 cents per acre. And by this evidence, in connection with the return on the execution, page 28 of record, it appears that the lands were sold for more than their full value, and that thereby the indebtedness of Adolph Wehrman was paid.

7. The fraudulent character of the deed of Adolph Wehrman and wife to appellant, dated December 17, 1859. This deed is found on page 15 of record, xhibit "A"

That this deed was a fraud is clearly shown by the evidence. Appellant was a man who at that time possessed no means for making such a purchase. Evidence of Rader, pages 64–66 of record: and of Ives, pages 66–69 of record. It appears from the record of the original case of Greeley, Gale & Co. vs. Adolph Wehrman, page 123 of record, in the return of the service of the notice, and in the decree on page

126 that the notice in that case was served upon Adolph Wehrman on the 17th day of December, 1859, the same day the deed was made. It thus appears that Adolph was then being pressed by his creditors. The grantor and grantee in the deed were brothers. The consideration of the deed is expressed as $3000, whereas the evidence discloses that the land was worth only about one half that amount. It further appears that appellant never paid a cent of taxes on the land. Answer, page 59 of record.

There is an entire absence of evidence in favor of the honesty of this transaction. Appellant does not even attempt to support it by his own testimony. It appears that at the time the case was tried all the parties to the deed were alive, and their testimony could have been easily obtained. Record, pages 66 and 69.

The above facts are such as require an explanation by the party claiming the benefit of the conveyance. In *Clements, v. Moore*, 6 Wallace, 299, it is said in the 7th syllabus:

"Where a creditor shows facts that raise a strong resumption of fraud in a conveyance made by his debtor, the history of which is necessarily known to the debtor only, the burden of proof lies on him to explain it; his estate being insolvent." See page 315.

If appellant cannot conscientiously testify that the conveyance was supported by a valid consideration and *bona fide*, he cannot expect a court of equity to say so for him against the facts shown by the evidence.

It is shown by the return of an execution issues against Adolph Wehrman, in Prescott county, Wisconsin, page 112 of record that his estate was insolvent at the time the chancery case was brought in O'Brien county. Hence, all the necessary elements to maintain a bill for the cancellation of the conveyance existed at the time.

8. The allegations of the bill concerning the suit between Clay county and Woodbury county over the right to

the taxes levied prior to the organization of the former county, and the subsequent agreement between O'Brien county and Woodbury county to let the claim of the latter to the taxes under the same circumstances be determined by the Clay county decision seem to be denied by the answer. All these allegations are abundantly supported by the evidence, and the question of the effect of these facts as taking the tax sales out of the decisions of the supreme court of Iowa against the validity of sales made for like taxes where no such showing was made, remains to be settled as a question of law, and will not be discussed here. The evidence showing the claim by O'Brien county, and its allowance by Woodbury county by reason of the decision in the Clay county case, is found on pages 97 to 100 of the record.

9. That the various purchases of and improvements upon the land under the title obtained at the tax and judicial sales were made in good faith, and in actual ignorance of any claim to the land by appellant is shown by the evidence of T. B. Conklin, page 77 of record; Peck, page 84-86 of record, and Schee, page 81 of record.

10. The payment of the taxes by complainants and their grantors, though denied, is shown by the stipulation and exhibits, pages 116-121 of record. Also by evidence of Conklin, page 76; of Greeley, page 95; and Schee, page 82 of record.

11. The non-taxation of lands in appellant's name as alleged in the bill, is shown by the stipulation and exhibit above referred to. The custom to tax to unknown owners is alleged by appellant, but not supported by any evidence. It affiirmatively appears that the land has been taxed regularly to Greely, Gale & Co. or to some of the grantees claiming title under their sale, ever since the year 1865. Page 117-120 of record.

Briefly stated, the facts alleged are fully sustained, and are as follows:

Adolph Wehrman owed the debt; he bought the land

about a year before the debt arose; he deeded the land on the day suit was brought on the debt, and to defraud the men he owed; appellant paid nothing for the land, and took the title with like fraudulent intent; the land was seized upon an honest debt, sold by order of court for more than its full value, and the debt paid; that was 27 years before the ejectment suits were commenced; neither party to the fraudulent deed ever paid a cent of tax on the land, or performed any duty in relation to it; their only act was to put a fraudulent deed on record; they knew the creditors of Adolph Wehrman were seeking to appropriate the land; they never had the land taxed to themselves; and for 27 years with full knowledge of all the facts they allowed the land to be bought and sold and improved, and homes to be acquired, and the value of the land increased without breaking silence. No excuse for this long delay is even attempted to be offered.

The points involved are numerous, and may be classed into, first, those relating to jurisdiction; and second, those involving the merits.

FIRST, AS TO JURISDICTION.

Counsel for appellant distinctly admitted in his written brief on the demurrer on the hearing below, that the court did have jurisdiction of the bill. See opinion of Judge Shiras, page 40 of record. The circuit court having determined the question in the light of this admission, appellant ought now to be held concluded by it.

But looking at the matter, we find the relief sought by the bill is two-fold: First, to quiet title under the judicial and tax sales, and second, to enjoin the law actions.

Appellees contend that jurisdiction attaches, for that,

First, they obtained the legal title under the attachment proceedings, and are entitled to a decree as against the fraudulent deed of appellant.

Second, that the chancery decree cancelled appellant's deed, but the records being lost, and appellant making actual

claim under his deed, constitute grounds for equitable relief.

Third, The tax deed authorizes a decree quieting title.

Fourth, that if the proceedings did not convey the legal title, still, under the Iowa statute, the action to quiet can be maintained on the ground of equitable estoppel, and of laches.

Fourth, appellees not being able to fully show their defense in the law action are entitled to have their title quieted, and the law action enjoined.

FIRST.

As to the first ground of jurisdiction, we have only to say at present, that it involves an examination of the merits of the appellees' title in so far as it is claimed to be legal. Hence we shall defer its discussion, so far as the alleged defects in the proceedings leading up to the sheriff's deed are concerned.

Supposing then, that the attachment proceedings are now invulnerable to the attack made on them, the question arises, has the court jurisdiction to quiet title in one who claims title by judicial sale as against a fraudulent grantee? This question has been settled by the Iowa courts in the affirmative.

Bridgman v. McKissick, 15 Iowa, on page 264.

In this case the court say: "It was also substantially held that where such debtor had fraudulently conveyed such property to defeat creditors, such creditors, after judgment, might adopt either one of two courses to remove the obstruction interposed to prevent a legal sale, under execution, of the property, namely: to levy upon and sell whatever interest the judgment debtor may have in the premises, and afterwards go into chancery to quiet the title and remove the cloud; or they may in the first instance, after the return of an execution unsatisfied, commence their suit in equity to remove the obstruction and subject the property to the satisfaction of the claim. And this we understand to be the doctrine of the books, as well as the practice of parties litigant under the sanction of the courts."

The provisions of the Iowa statute authorizing actions to quiet title are as follows:

"Sec. 3273. An action to determine and quiet title of real property may be brought by any one having, or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto, though not in possession."

"Sec. 3274. The plaintiff must file his petition under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and averring that he is credibly informed and believes that the defendant makes some claim adverse to the estate of the petitioner, and praying for the establishment of the plaintiff's estate . . . "

In the case of *Judson vs. Lyford*, 24. Pac. Rep. 286, the Supreme Court of California held the same doctrine as that announced in *Bridgman v. MeKissick*, supra. The California statute authorizing actions to quiet title is substantially the same as that of Iowa.

SECOND.

It appears from the averments of the bill and also the proofs that all of the records upon which the decree in the chancery case of Greely, Gale & Co. vs. Adolph and Frederick Wehrman is based are lost. It further appears that the decree in that case declared the appellant's deed to be fraudulent and void and cancelled the same and ordered the land theretofore attached sold to satisfy the judgment; that the land was thereafter levied upon and sold and a sheriff's deed executed. If this chancery decree is valid, it then is clear that the appellee's grantor secured a valid title under the sheriff's deed as against the appellant.

Under that state of facts the appellees have a right to maintain their action to quiet the title against the claim now made by appellant under his deed. The loss of title papers is of itself a sufficient ground for the exercise of equitable jurisdiction. And the fact that, notwithstanding this decree

appellant refuses to be bound by the same and still makes claim of title to the property, is another reason why, under the Iowa statutes, this action is maintainable. That a suit to quiet title may be sustained under such circumstances is directly determined by the supreme court of Iowa in the case of *Paton vs. Lancaster* 38 Iowa 495. Plaintiff, in that case, claimed title, and that he obtained a decree quieting it as against the principal defendent. The defendant, who was plaintiff in the first case, had refused to abide by the decree, and made claim to the land. The case in which his title had been adjudged not good is that of *Johnson v. Chase*, 30 Iowa, 308. In the second case the court say:

"But we do not determine this question, because the judgment of the District Court, in this case, must be affirmed upon another ground *and regardless of the question whether the former judgment was valid or not.*

"We have a statute, which was first embodied in Rev. 1860, Sec. 3602, and which was amended by Ch. 167, Sec. 34, of the laws of 1870, and see now Code of 1873, Sec. 3274, authorizing a person in possession ot real property and claiming title thereto, to bring an action against any person or persons making adverse claims to such lands to quiet his title. While it is manifest that the pleader in this case did not frame the peition with a special reference to this statute, yet he has embodied in it the essential averments; the the general prayer for relief will entitle the plaintiff to such relief as the averments and proofs will justify. The plaintiff introduced in evidence a tax title deed to D. D. Chase, regular in form, and a conveyance by him to the plaintiff. The defendant introduced the certificate of entry of the land to the patentee and a regular chain of conveyances down to himself. No defect in substance or form is shown against the tax deed. It was held in the case of *Johnson v. Chase*, 30 Iowa, 308. which is the case referred to in this plaintiff's petition, that the deed was sufficient to convey the title. In this state of the case nothing can be clearer than that the plaintiff, upon the real merits of the case, is entitled to judgment quieting his title to the land."

Under this decision the fact that the defendant refused to be bound by the former adjudication, if valid, and was endeavoring to enforce his claim to the property, constituted

under the Iowa statute, such a cloud upon the plaintiff's title as authorized a decree quieting that title against the same.

That a claim under a deed void on its face will, under such a statute as that in Iowa, constitute such a cloud upon a title as will sustain the jurisdiction of a court of equity to quiet against it is determined in the case of *Reynolds vs. Crawfordsville Bank* 112, U. S. 405. The Indiana statute was as follows:

"An action may be brought by any person, either in or out of possession, or by anyone having an interest in remainder or reversion, against another who claims title to or interest in real property adverse to him, although the defendant may not be in possession thereof, for the purpose of determining and quieting the question of title."

The court in their opinion on page 411, say:

"This act confers upon any one, against whom another, whether in or out of possession, claims an adverse title or interest in real estate, the substantial right of having the disputed title settled by action of the courts.

"Under this statute it has been decided by the Supreme Court of Indiana that it is sufficient to aver that the defendant claims some interest or title, or pretended interest or title, ad verse to complainant, without stating what that title is [Citing cases.]

"The bill of complainant in this case complies with this rule by averring that "said Reynolds is, under his deed, (from Baird, the assignee,) claiming and asserting title paramount to the title of this complainant; and the answer of the defendant admitts that, under the deed executed to him by Baird, he is claiming whatever title to said lands the same confers upon him.

"The question whether, under such a statute as that of Indiana and under the facts stated, the Circuit court had jurisdiction to render the decree complained of, has been, in effect, decided in the affirmative by this court in the case of *Holland v. Challen*, 110 U. S. 15."

The invalidity of the deed by decree of court, will not defeat jurisdiction any more than if such invalidity appeared on the face of the deed, where a claim is made that the deed is still valid.

THIRD.

Appellees claim title under the tax deed, and are entitled to have the title quieted, unless the tax deed is invalid, The inquiry as to its validity is a matter of merits, and not jurisdiction. That a tax title authorizes an action to quiet titles under similar statutes, is decided in *Holland v. Challen*, 110 U. S. 15. This is true in Iowa. The formal defects in the deed, as a sale *en masse*. are cured by the five year statute of limitations in that state.

FOURTH.

We further maintain that under the Iowa statute a party who has but an equitable title, or whose interest in the land depends upon facts which estop the other party from setting up his claim, or which would constitute a good defense in equity to such claim, can maintain his action to quiet that title. That under such statutes equitable title is sufficient, has been repeatedly held. In the Reynolds case supra, this court say:

"When, therefore, no debts having been proven against his estate the appellant was discharged and his assignee in bankruptcy had fully settled the estate, the quit claim deed executed by the former to the appellee vested in the latter a clear equitable title to the premises in controversy and this was sufficient under the Indiana statutes to justify the relief prayed for in the bill."

So, too, in the case of *Stark v. Starrs*, 6 Wall 402, which arose under an Oregon statute of similar import, this court say that the statute confers jurisdiction beyond that ordinarily exercised in quieting title. While holding the plaintiff had no title, the court say on page 418, that he must show some right in the premises before he can call in question the validity of the defendant's title.

In *Grisam v. Moore*, 6 N. E. (Ind.) 631, the court say that in a suit to quiet title it is only necessary that the plaintiff disclose in his complaint whether the title claimed is legal or equitable. If equitable title is claimed all the facts that go to maintain it may be shown. And again in *Stanley et al v.*

Holliday, 30 N. E. [Ind.] 634, the court, referring to the above case, say that a complaint for quieting title in which it is alleged that the plaintiff "is the owner by complete equitable title and is entitled to the possession thereof, is good on demurrer without specifying the nature and extent of such title."

In *Echols v. Hubbard*, 7 So. [Ala.] 817, it is held that equitable title alone is sufficient to authorize the action. The court say:

"But equitable jurisdiction is invoked on the further ground that the complainant is holding under an equitable title, upon which her rights could not be asserted in a court of law. This, or itself, is sufficient predicate for the interposition of the chancery court irrespective of possession." And further on, page 818.

"The effect of this instrument, therefore, was only to raise up an estoppel in favor of complainant against her cotenants as to the land in controversy, upon which she could invoke the jurisdiction of the chancery court to the divestiture of the title out of them and have it conveyed into her. Very clearly this is nothing more than an equitable title which she could not assert at law . . . . . The complainant has, therefore, no remeby at law for the adjudication of the issues presented in her bill "

The same rule obtains in Iowa, as shown in the cases of *Rankin v. Miller*, 43 Iowa, 20, par. VI, and *Cole v. Des Moines R. R. Co.*, 76 Iowa, 185.

If equitable title is sufficient, it would seem that the nature of that title, or its origin would be wholly immaterial. The real question under these statutes is: Has complainant an *interest* in the land which, upon equitable principles, ought to defeat the defendant's claim?

Action to quiet title may be maintained upon mere adverse possession. Notwithstanding this is a statute of limitation and defensive, yet, when the statute has run, it permits the party in possession to invoke the aid of equity to get his title made of record.

Cramer v. Clow, 81 Iowa, 255.
Boling v. Clark, 83 Iowa, 481.
Quinn v. Quinu, 76 Iowa, 565.
Tourtellotte v. Pearce, 27 Neb. 57.
Bunce v. Bidwell, 43 Mich. 542.
Brant v. Chapman, 5 Cranch, 359.
Sharon v. Tucker, 144 U. S. 533.
Echols v. Hubbard, supra.

In the last case the court held that the agreement was sufficient to create an estoppel in favor of complainant, and that estoppel was sufficient to authorize the action. So under the Iowa statute if the facts alleged raise an estoppel against the appellant, that estoppel is sufficient to create such an interest in the land as will warrant an action to quiet title. Nor can it matter what facts the estoppel grows out of, or what the nature of those facts may be. If the facts are such that a court of equity would hold a party complainant estopped to ask relief, whether on the ground of laches, or any other estoppel, then those same facts, being so sufficient as a defense, constitute such an interest in the land as authorizes an action to quiet title. The doctrine of laches, as applied in equity, is but an equitable statute of limitations. Equity makes the limitation elastic, and applies it according to its idea of the particular case. When once a bar is fouud to exist in equity, it is as effectual as the application of the statutory bar. Such being true, what reason can be assigned for saying that where the laches or equitable estoppel would constitute an effectual bar in equity, a court of equity cannot seize hold of the facts constituting such bar, and in precisely the same manner as in cases of adverse possession, make it the basis for a decree quieting title, in order that such title may be made of record? If in equity the lapse of time creates a good bar, it necessarily follows that thereby an *interest* in the land is created, and which, united with possession will, under the Iowa statute, give a court of equity jurisdiction to quiet the title

The claim that the facts alleged constitute only an equitable estoppel which may be plead in the law action, cannot affect the question. The true question still is: have appellees got any ground, under the facts, which create such an interest in the land as brings them within the terms of the statute. If they have, then the pendency of the law action, even were it sufficient for that purpose, could only be plead in abatement of this action. No such plea has been made. If the law action did not exist, the bill would be within the jurisdiction of the court. It is none the less so that the law action is pending. But the law action cannot be pleaded in abatement, for there is no identity of issues, the relief sought in the two cases being entirely different. Suppose the action abated on account of the law action, and then a dismissal of the latter? What relief could appellees get against the non-resident defendant?

See *Landstraat v. Nelson*, 40 Fed. Rep. 783.

FOURTH.

The relief prayed in the bill goes much further than mere equitable estoppel. Let is be admitted the latter has been held pleadable in a law action. But certainly conusel for appellant will not contend that the defense of laches can be availed of in the law action. How, then, can appellees get the benefit of appellant's long delay and laches, if not by bill in equity enjoining the prosecution of the law action, and asking relief upon the same facts that he would be granted it, had appellant chosen an equitable forum? Does not the case come within the principles of the case of *Drexel v. Berney*, 122 U. S. 241? There, an action to get the benefit of a defense, based upon equitable estoppel, as against a law action then pending, was upheld on the ground that the party could not get as full benefit of the defence in the law action as equitable principles entitled him to. The court on page 253 say.

"All that can properly be said is, that in order to justify a resort to a court of equity, it is necessary to show some

ground of equity other than the estoppel itself (mere equitable estoppel) whereby the party entitled to the benefit of it is prevented from making it available in a court of law. In other words, the case must be shown to be one where the forms of the law are used to defeat that which in equity, constitutes the right. Such a case is one for equitable interposition."

Just so in this case. Appellant wants his claim tested by the cold principles of a court of law, and was not willing to submit it to the test of equitable principles. This for the purpose of preventing appellees taking advantage of the staleness of his claim. If appellees have a right to retain this land, on account of the laches of appellant, then he cannot use the forms of law to defeat that right. It certainly cannot be possible that equity in one breath will say appellant has lost his rights by his laches, and that the case in equity is one that entitles appellees to the land, and then in the next breath nullify that right by turning them over to a jurisdiction that cannot recognize it.

Thus, on either of the grounds, that of the right to quiet title or that of inadequate remedy at law, the appellees are entitled to have the merits of their claim heard by the court of equity, and if sustained, to a decree quieting their title, and enjoining the law action.

Where the jurisdiction attaches for any purpose, the court will, on familiar principles, retain the case and settle all the questions in it and administer relief according to equitable principles.

In all the cases where the right to relief quieting title is denied, it will be found that there was some legal obstacle in the way, like the actual possession, in the case of *Whitehead v. Shattuck*, 138 U. S. 146; or want of legal title, where such title was required by the local statute, as in *Frost v. Spitley*, 121 U. S. 552. But we know of no case which denies relief under facts similar to the case at bar, in which none of the above obstacles present themselves.

In addition to having admitted the jurisdiction in the trial court, appellant is precluded from now questioning it by having answered to the merits of the bill and gone to trial. This question has been several times decided by this court lately.

Daniel's Chancery Practice, vol. 1, p. 555, 4th Am. Ed. Cited in

Raynes v. Dumont, 130 U. S. 354, near end of opinion.

Kilbourn v. Sunderland, 130 U. S. 505, near begining of opinion.

Brown, Bonnell & Co. v. Lake Superior Iron Co., 134 U. S. 530.

SECOND, THE MERITS.

Appellees' title under the judicial proceedings is attacked upon the following grounds:

1. The petition is said not to be verified.
2. The notice and petition do not describe the judgment.
3. The judgment was entered on a judgment not sued on.
4. The Woodbury district court acquired no jurisdiction.
5. The transcript of record on change of venue had no seal.
6. The sale on execution was *en masse*.
7. The writ of attachment had no engraved seal.
8. The judgment is claimed to be personal.
9. The execution issued on it was general.
10. The chancery decree was void for want of jurisdiction.

The tax title is attacked on the ground that O'Brien county had no power to make the sale.

As to the first five defects, it is manifest they are all mat-

ters within the jurisdiction of the court to determine, and they are not subject to collateral attack.

The statute did not require a seal to be attached to the transcript, unless it can be called "process." Jurisdiction did not depend on the form of the transcript, but on the order for transfer.

Campbell v. Thompson, 4 G. Gr. 415.

Farr v. Fuller, 12 Iowa, 83.

The answer admits that the original papers were in fact filed in the Woobury court.

That the sale was *en masse* cannot avail appellant as against innocent purchasers, nor is it subject to collateral attack.

Williams v. Allison, 33 Iowa, 289.

Lewis v. Whitten, 112 Mo., 318.

Did the lack of an engraved seal render the proceedings a nullity? The court was one of general jurisdiction, but no seal had been provided. It could arrest and try criminals and enforce civil rights and obedience to its orders. Did the failure of the officer to provide the court with an engraved seal suspend these powers of the court and render it helpless until a seal could be provided? It will not be forgotten that this is not a case of failing to make use of a seal which the court possessed. Does not a court of general jurisdiction, *ex necessitate*, possess the inherent power to bridge over such a difficulty, in the interests of public justice? Could it not adopt a device as a seal, as a scroll, for the purpose of attesting the genuineness of its process until the officer whose duty it was had furnished the engraved seal? It seems to us it would be altogether too serious to deprive the court of its powers for want of something to attest the genuineness of its writs. If it had the power to adopt a temporary seal, then it must be presumed by this court that it did so, and that the one used was held by the court be its seal.

This defect is one of mere form. It is unlike cases

where, by reason of want of service, jurisdiction fails; or where, by reason of the failure of the return to show the only condition on which substituted service could be made, as in *Settlemeir* v. *Sutherland*, relied on by counsel. That case goes to the extreme, and ought to mark the limit.

It is admitted by the answer that the land was actually seized by the sheriff under the writ so far as he could do so with such a writ. Record, page 44. Thus the court took actual control of the land.

The statute that requires the writ to be sealed is as follows.

"Sec. 2632. All process issued by the clerk of the supreme or any district court shall bear date on the day on which it is issued, be tested in the name of the clerk who issued the same and be under the seal of the court."

By this provision three things are required: dating, signing and sealing. How one can be more mandatory than either of the other two we are not able to understand. If the absence of the seal destroys the jurisdiction *in rem*, why will not the absence of the date, or a wrong date, or the failure to sign? Failure to serve notice renders the proceeding absolutely void; and such failure may be shown against the positive recital in the record. Those things which absolutely destroy the judgment, may be shown by parol, against the recital in the record. Why is it not true, then, as to the want of the seal, if that renders the proceedings so void, as to be subject to collateral attack? If this defect produces that result, will not the want of testing and correct date do the same? And why may not these matters be shown in order to defeat jurisdiction, and raise the right of collateral attack, even against the recital in the record, equally with the case respecting want of notice?

Now, can it be possible that the courts are going to bring the matter of form of proccss forward into the arena of conflicting memories, and thus allow the verity of judgments to become their footballs? In cases of lost process claims could

easily be made that they had no seal, were not dated, or were not signed. Would the court allow the sufficiency of the writ in that respect to be questioned by averment and proof? And, yet, according to the decisions, this right could not be denied, if the defect is one that absolutely destroys the jurisdiction of the court.

Under the Iowa decisions the writ could not, at the time this was issued, be amended by attaching the seal. But in *Murdough v. McPherrin*, 49 Iowa, 479, [1878] under an amendment to the statute, the court held the writ could be so amended. Hence at the time the ejectment suit was commenced the writ was amendable, and therefore voidable and not void. The effect of this amendment is to cure all such defects in prior process, where no vested rights had been gained under them, by making the process merely voidable and not subject to collateral attack. That the amendment would apply to cases then pending admits of no doubt. The statute is remedial. Why should it not apply to defects arising prior to the amendment, in all cases where they are brought up after the amendment? The question is how is such a writ regarded by the law now, is it amenbable or not? If it is, it is merely voidable. The rule as to curative acts is as follows: A defective proceeding may be cured by act of the legislture where the latter possessed the power to authorize the result by prior legislation. Nor is such power limited by the fact that, but for such curative act, the defect would be fatal. These principles have often been declared by the Iowa court. A striking example is found in the case of *Iowa Railroad Land Co. v. Sac County*, 39 Iowa, 151. The case involved the validity of certain judgment taxes levied by the board of supervisors. The county had no power to levy the taxes, and action was brought to enjoin their collection. The taxes were held illegal on appeal, for want of power to levy them. [Page 138.] A petition for re-hearing was filed, and before its determination a curative act was passed by the legislature. The court held the act valid and applicable, and that under it the taxes were valid. In the same *plaintiff v.*

Soper, 39 Iowa, 112, the question of power is fully discussed, and the court say that the legislation is valid alike to cure the acts of officers void for want of power as well as those void for informality or irregularity. Other cases illustrative of the power to cure defects in past proceedings are as follows:

Fergusou v. Williams, 59 Iowa 717; defective acknowledgments.

Tilton v. Swift, 40 Iowa, 78, making judgments on verdicts rendered after term time valid.

Smith et al v. Callaghan, 66 Iowa, 553; sale by executor under will without compliance with requirements of the statute.

State ex rel. v. Squires, 26 Iowa, 340; validating school district.

Undoubtedly the legislature may dispense with mere matters of form in the proceedings as well after they have taken place as before, says Judge Cooley in note on star page 369 of his Const. Lim.

The supreme court of Iowa has never determined whether the failure to attach the seal could be taken advantage of collaterally. In the only two cases involving the question, the matter came up on a direct appeal, on motion to quash the writ, and release the property. These very motions recognized that the *court* had seized the property in fact. It is true that in *Insurance Co. v. Hallock*, 6 Wall, 556, this court held that an execution without seal rendered the process void. The court in the opinion say that no case had been cited sustaining such a writ, and they had not been able to find any holding it valid, while the authorities were uniform that the want of seal rendered the process void, and not voidable. In this conclusion the court were mistaken, for it had been held prior to that date that it did not render the process void, but merely voidable. See, as holding this squarely, the following cases decided prior to the Hallock case:

People v. Dunning, 1 Wend. 16.

Corwith v. State Bank of Illinois, 18 Wis. 565.

Sabin v. Austin, 19 Wis. 423.

And since the decision in the Hallock case the process has been held merely voidable.

Taylor v. Courtney, 15 Neb. 190.

Wright v. Nostrand, 94 N. Y. 34. In this case the defect was not the want of a seal, but the court in citing cases classify those wanting seal and also those wanting *signature*, as amendable, and say:

"We are of the opinion that the execution in question, although extremely defective, and subject to be vacated on motion, for informality, was yet not so defective that it can be treated as void when questioned in a collateral proceeding. Most of the defects appearing in the execution have been held amendable, and defects of that character can only be taken advantage of by the defendant in execution in a direct proceeding to set it aside." [Page 47.]

Warmouth v. Dryden, 125 Ind. 355. This case is directly in point, and although the Hallock case supra came from the same state, the Indiana court do not cite it, but hold exactly the opposite.

In section 46 of 2nd ed. of Freeman on Executions, the author says the modern tendency of the decisions is to hold the process amendable, and such is his opinion. He cites a number of authorities *pro* and *con*.

In the Corwith case, supra, the court permitted the amendment to be made by attaching the seal three years after the sale, and after a motion to set aside the sale had once been made, granted and the decision reversed, and a non-suit taken, the motion to set aside having been again filed after the seal had been attached.

In the case in 15 Neb., supra, the court hold the seal can be attached after sale.

In the Hallock case supra, it will be observed that the question arose on process issued *after* the final action of the

court; hence, there was nothing in the case calling for any determination by the court of its sufficiency. The case does not, therefore, become authority for a case wherein the court is called upon to pass directly upon the sufficiency of the form of its process. As the judgment assailed was founded directly upon and recites the attachment, it must have determined that the attachment was valid.

In the light of these decisions, and applying the enlarged right of amendment under the Iowa decisions, it seems clear that the writ of attachment cannot now be questioned collaterally. No vested right of Adolph Wehrman is interfered with, and much less, of the appellant. His position is in no manner altered. Having made these writs amendable, the legislature has in effect declared that the defect renders the writ merely voidable, and not void. The law as amended is the one in force when appellant chooses to assert his claims. His remedies are under that law and must be tested by it.

End. on Int. of Statutes, Sec's. 283 to 288.

Again, the evidence shows clearly that the deed under which appellant claims is void as against the creditors of Adolph Wehrman. Hence appellant did not acquire any title to the land. He cannot, therefore, question the proceedings in the attachment case which resulted in the sale of Adolph's interest in the land. Whether the judgment was good as against Adolph Wehrman is nothing to appellant so long as nothing is sought to be taken from him to which he has a legal right.

It is also claimed the judgment is void as being *in personam*. So far as it pretends to enter a personal judgment, it is without doubt void. But the judgment orders the attached property to be sold, and if the attachment is sustainable, then it is a good judgment *in rem*. *Anderson v. Goff*, 13 Pac. Rep., 73, where the point is specifically decided. And in *Lutz v. Kelley*, 47 Iowa, 307, the supreme court of Iowa hold practically the same. While, in that case, the judgment was held invalid, as a personal judgment, yet, the court inquire

into the fact whether an order of foreclosure and sale was properly part of the judgment, and determine it was not, and *therefore*, the judgment was merely *in personam*, and void. This inquiry would have been useless, if with the order for sale, it was still a personal judgment.

It is also claimed that the execution being general in form, the sale was invalid.

This, too, is an objection that the appellant has neither the right to urge, as to any interest of Adolph Wehrman in the land secured under the execution; nor can the objection be urged collaterally. This is expressly held in *Burnett v. McCluey*, 4 S. W. Rep. (Mo.) 694. The record shows that under the general execution the identical lands, ordered by the court to be sold, were levied upon and sold, and nothing more.

In *Valley National Bank v. Jackaway*. 80 Iowa, 512, where a judgment was entered ordering a note to be sold on special execution, and the clerk by mistake issued one general in form, and thereunder the note was purchased by plaintiff, the court say, in holding the sale good, "The effect of the deviation from the course intended is far more shadowy than substantial."

CHANCERY DECREE.

If we are wrong in the foregoing conclusions, still we say, the chancery decree sets all these questions at rest. The bill alleges that the petition in that suit alleged the rendition of the judgment, the fraudulent character of the deed, and that the same was without consideration, and asked the cancellation of the deed and that the lands be sold to satisfy the judgment. Record, 6. These allegations are all admitted in the answer, page 49 of record. So the bill was sufficient for the purpose designed. Had appellant appeared in the cause he might have alleged that the judgment *in rem* was void, for the reasons now urged, and that the conveyance was valid. Had such issues been made, it is clear that the court

would have had to investigate and determine the very questions this court is now called to pass upon. That the finding would be a bar can admit of no question, and does not need a citation of authorities to prove. It is equally binding in the absence of an appearance and answer. The court had to determine whether the allegations of the petition were true before it could grant relief. The sufficiency of the attachment proceedings lay at the very threshold of the proceeding. The rule that all defences which might have been made are conclusively presumed to be settled by an adjudication, precludes the right to now set up these matters. If the court had jurisdiction at all, it was to settle the very questions that are now in dispute in this case. That decree is pleaded in bar of the appellant's claim, and we cannot understand how any question of its sufficiency can be made, if the court had jurisdiction to enter the decree.

That a state has power to authorize actions to quiet title on service by publication against non-resident owners, is now settled.

Arndt v. Griggs, 134 U. S. 316.

Bennet v. Fenton, 41 Fed. 283.

But we presume it will be claimed that the above decisisons does not cover the present case, and that the state cannot authorize an action against a non-resident to set aside a fraudulent deed.

The following sections of the Revision of 1860 of Iowa, apply:

"Sec. 2831. Service may be made by publication in either of the following cases:

1. In actions brought for the recovery of real property, or an estate or interest therein.

2. In an action for the partition of real property.

3. In an action for the sale of real property under a mortgage lien or other incumbrance or charge.

4. In actions to compel the specific performance of a contract of sale of real estate. . . . . .

5. In actions brought against a non-resident of this state, or a foreign corporation having in this state property or debts owing to such defendant, sought to be taken by any of the provisional remedies, or to be appropriated in any way.

6. In actions which relate to, or the subject of which is real or personal property in this state, when any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the state or a foreign corporation.

Sec. 2832. Before service can be made by publication, an affidavit must be filed that personal service of notice cannot be made within this state, on the defendant to be served by publication. When such affidavit is filed the party may proceed to make service by publication.

Sec. 2835. Actual personal service of the notice either within or without the state, supersedes the necessity of publication.

Sec. 2842. When a petition has been filed affecting real estate, the action is pending so as to charge third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's title, if the property affected be situated in the county where the petition is filed."

There are also sections giving to a defendant served by publication only, the right to appear within two years and make defence to the action. But with personal service, as in the present case, these statutes are not applicable.

The foregoing statutes are substantially the same as the ones cited in the case of *Arndt v. Griggs*, supra. The question is, does said statutes permit an action to cancel a fraudulent deed, and to subject the land to the satisfaction of a judgment? And has the state power to authorize such to be done?

It was sought in the Arndt case to argue that an action to quiet title is a suit in equity, and that as equity always acts upon the person, and the person cannot be brought into court on service by publication, no jurisdiction was obtained. A

creditor's bill is an action in equity; but in what respect it is any more personal in its nature than the action to quiet title is not apparent to us. In the Arndt case the court say:

"But no such imperfections attend the sovereignty of the state. It has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subjection to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. It cannot bring the person of a non-resident within its limits—its process goes not out beyond its borders—but it may determine the extent of his title to real estate within its limits; and, for the purpose of such determination, may provide any reasonable methods of imparting notice."

In the opinion almost every method of "excluding the interest of a defendant" in land is referred to by the court. The decisions of state courts holding actions to quiet title valid on service by publication; actions of partition of real estate; actions to enforce specific performance of contract to sell real estate; to enforce liens upon real estate; proceedings to condemn land for public purposes; and, lastly, the very case we have at bar, namely; actions to cancel fraudulent conveyances, are all referred to in the opinion as coming within the power of the state to authorize. All these cases are plainly regarded as substantially *in rem*.

And in the case of *Hart v. Sansom*, 110 U. S. 151, this court speaking of the power of states in this respect, say: "It would, doubtless, be within the power of the state in which the land lies to provide by statute that if the defendant is not found within the jurisdiction, or refuses to make, or *cancel* a deed, this should be done in his behalf by a trustee appointed by the court for that purpose." And the court say in the Arndt case, "And, of course, it follows that if a state has power to bring in a non-resident by publication for the purpose of appointing a trustee, it can in like manner bring him in and subject him to a direct decree."

Adams v. Cowles, 95 Mo. 501, cited in the Arndt case, is

directly in point. The case holds that under the Missouri statute an action to set aside a fraudulent deed can be maintained on service by publication. The statute allowed service by publication "in all actions, at law or in equity, which have for their immediate object the enforcement or establishment of any lawful right, etc., to or against real estate." The very fact that this case is cited by this court approvingly is evidence that such actions are regarded by it as substantially actions *in rem*.

In *Wuntzel v. Landry*, 39 La. Ann. 312, cited in the Arndt case, the action was brought to declare the simulation of a sale of certain immovable property made by the common ancestors to two of the heirs, and for a partition. By this we understand that the action was really to have the conveyance by the ancestors declared fraudulent, and to then have a partition of the property. It was held that the relief could be granted against a non-resident defendant who did not appear. The proceeding is said to be one substantially *in rem*.

When we look at the action itself we find the same principles applicable that are applicable to all the other classes of cases in which jurisdiction is maintained. It is an action in the most strict sense to "exclude the interest of the fraudulent grantee" in the property. In a larger sense, it is in the nature of a bill of peace, to get the title quieted as against the fraudulent grantee, so it can be sold under the process of the court. The decree operates strictly upon the interest of the party in the property.

That such an action is within the purview of the Iowa statute above cited seems to be clear. It comes squarely within the 6th sub-division of the section.

See also upon the subject *Hardy v. Beatty*, 19 S. W. 778.

The only case we can find to the contrary is that of *Remer v. McKay*, 54 Fed. 432. That was a case of notice by publication, and no notice of the proceeding came to the alleged fraudulent grantee. It is sought to draw a distinction

between actions to settle title, and actions to cancel fraudulent deeds. The latter are declared to be in their very nature *in personam*. It is in this conclusion as to the nature of the action, that, in our opinion, the error of the court lies. Neither the Louisana nor the Missouri case is cited; nor the opinion in the present case, though published long before the determination of that case. The language of this court in the Arndt case, and in many of those cited in that case, concerning the right of a state to control all matters pertaining to the title of property within its borders, is certainly broad enough to include the right to keep those titles free from secret trusts that operate to the detriment of its citizens. A person cannot come into a state and place a false deed on record, and then withdraw from the jurisdiction of the court and laugh at the weakness of a sovereignty that is unable to preserve the integrity of its own records.

An action to cancel a fraudulent deed is as much an action directly against the real property, as an action to partition it, or to enforce specific performance of a contract. This latter class of cases is subject to all the criticism applied by the court in the Remer case to a proceeding of this kind. It would be just as easy to divest ones property behind his back under a pretended agreement to convey, with a claim of part performance, as to do the same under a creditor's bill. It is impossible to see how a decree which sets aside a deed can be any more personal in its nature than one which says the defendant must himself give up his title, or if he fails, a trustee will be appointed to do it for him. The claim that because "most, if not all," titles are of record, the owner must be supposed to be watching his title and the courts, has no strength in it. The fact that cases innumerable may and do arise concerning title, in which the claim on one side is not a matter of record, demonstrates the unsoundness of the distinction. It is submitted that this decision cannot stand. It is not sought in it to show that the Iowa statutes are not broad enough to permit such a proceeding. It simply holds the state cannot permit it to be done.

In *Miller v. Davison*, 31 Iowa, 435, the Iowa court holds that an action to quiet title can be brought on service by publication under the statutes quoted supra, or on personal service out of the state, and that no affidavit of non-residence need be filed where the service is personal.

We therefore think that the decree subjecting the land to the satisfaction of the judgment is now conclusive as to all the questions presented touching the validity of the attachment. The decree orders the land sold to satisfy the judgment, but does not specify the form of the execution. This fact is an additional reason why the form is not a matter of any moment.

TAX TITLE.

The tax deed is based upon a sale made after O'Brien county was organized as an independent county, for taxes levied while it was attached to Woodbury county for revenue purposes. The supreme court of Iowa has held that such sale was void for want of power to make it, the taxes belonging to Woodbury county.

The record shows that the same state of facts existed between Clay county and Woodbury county, and then a dispute arose over the question of which county was entitled to the unpaid taxes at the time of the organization of the new county. This dispute was carried into the district court of Woodbury county, and it was there judicially determined that Woodbury had no right to the taxes. This decision was never appealed from and stood for over twenty-five years unquestioned. The record also shows that O'Brien county made claim to the taxes unpaid at the time it was organized, and that its claim was based upon the decision in the Clay county case. It further appears that Woodbury county, by its proper officers, expressly recognized the claim under the decision of the district court, and, for the purpose of avoiding the useless expense of another trial, acceded to the claim of O'Brien county and turned over the taxes already collected by it and the uncollected taxes.

Under this state of facts the sale was made. Appellant makes no claim that he has ever paid of offered to pay these taxes to Woodbury county; nor is the latter county shown to have ever made any claim to them since the settlement of the matter between it and O'Brien county.

That the adjudication between Clay and Woodbury counties was binding cannot be doubted. The court was one of general jurisdiction and its decree was not appealed from. This point has been decided in the unreported case of *Edmondson v. Nesbitt*, decided by the Hon. J. M. Love, May 23, 1889, at Des Moines. That case arose on a tax sale made by Sioux county on precisely the same state of facts, and it was held that the sale was valid, the right of Sioux county to the taxes having been adjudicated by the Woodbury district court as in the Clay county case.

It is true in the present case no formal decree was entered by the court; but the parties are shown to have expressly adopted the decision of the question in the Clay county case, and it seems as if such recognition ought to have the same force as if the parties had formally submitted the question to the same court again and secured a decision.

This decision, and the agreement made in pursuance of it, have stood as a rule of property in this county for a quarter of a century, and it ought to be recognized as binding.

It is alleged in the bill that more than ten years have elapsed since the tax deed was executed and recorded, and that appellant is barred by the statute of limitations from questioning the validity of the tax deed. Page 19 of record. The question whether a tax deed founded on a void sale, where the taxes are not questioned, but only the power to sell is questioned, is good against attack after ten years has not been decided by the Iowa court. Sec. 893 of the Code of 1873 is as follows:

"Any person entitled to redeem lands sold for taxes after the delivery of the deed, shall redeem the same by an equita-

ble action in a court of record, in which all persons claiming an interest in the land derived from the tax sale, as shown by the record, shall be made defendant, and the court shall determine the rights, claims and interest of the several parties, including liens for taxes and claims for improvements made on the land by the person claiming under the tax title. And no person shall be allowed to redeem land sold for taxes in any other manner after the service of the notice provided for by the next section, and the execution and delivery of the treasurer's deed."

The following section requires notice to redeem to be served upon the party in possession, or in whose name the land is taxed, in cases arising since 1873, before tax deed can be made. But under the decisions of the Iowa court, notice is not required where the sale was made before this section took effect.

Robinson v. First National Bank, 48 Iowa, 354.

"Sec. 902. No action for the recovery of real property sold for taxes shall lie, unless the same be brought within five years after the treasuruer's deed is executed and recorded as above provided."

The general statute of limitations is as follows:

"Sec. 2529. The following actions may be brought within the times herein limited respectively after their causes accrue and not afterwards, except when otherwise specially declared.

5. Those brought for the recovery of real property, within ten years."

The Iowa court has held that where the sale was void for want of power, the special limitation of five years did not apply. That section applies only where the lands have been *sold* for taxes; and as the sale is void, no *sale* can be said to have taken place for the statute to act upon. *Early v. Whittingham*, 43 Iowa, 167, par. III. So in the present case, this special statute does not apply.

In *Williams v. Allison*, 33 Iowa, 284, cited supra, it is held that the general statute of ten years applies to actions to

set aside a sheriff's deed, being the statute cited above. And in *Stanley v. Morse*, 26 Iowa, 454, the same statute is applied to actions for specific performance of contracts to convey.

By section 893, supra, after execution and delivery of the tax deed, it cannot be questioned except by an action in equity to redeem. The right of action to set aside the tax deed accrues as soon as the tax deed is executed and delivered. In the present case the deed was executed, delivered and recorded more than twenty years before its validity is questioned by appellant. This right of action to set aside the tax deed after its execution and delivery, is of precisely the same nature as that to set aside a sheriff's deed. This statute unlike the special one, does not depend upon the existence of a valid sale, owing to its peculiar wording; but applies generally to all actions involving the right to recover real estate.

The fact that a tax deed is void for want of power does not prevent the title from passing under it sufficiently to require the owner to resort to this action in equity to redeem or set aside the sale.

In *Long v. Smith*, 67 Iowa, 25, the court hold that an action to redeem and set aside an invalid tax deed is the proper form of action after deed is made. And in *Callanan v. Lewis*, 79 Iowa, 452, the court say:

"Defendant maintains that the deed and 'service of notice' referred to in this section 893, mean a valid deed, and completed legal service of notice and deed. Thus construed, no action could be brought under said section 893, except by or on behalf of minors and lunatics. The deed conveys the title to the purchaser, who holds it subject to be defeated by redemption of the lands. *Bowers v. Hallock*, 71 Iowa, 218. Until this deed was set aside and redemption made, the plaintiffs *were not entitled to immediate possession, and hence could not proceed under section 3246;* neither was this an action to determine and quiet title alone. The principal and controlling relief sought was to be permitted to redeem from the tax sale; and the other relief asked *is dependent upon such right* and a mere incident in the case. The provision of section 873, that no person shall be allowed to redeem in any other manner

than by equitable action, after service of notice and execution and delivery of the deed, does not mean a completed and legal service, or a valid deed"

Section 3246 referred to is as follows:

"An person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action against any person acting as owner, landlord or tenant of the property claimed."

This is the section under which the appellant's law action is brought.

In *Bowers v Hallock*, 71 Iowa, 219, the same court hold that a deed issued without notice is void, and not barred by the special statute, and further say:

"The deed, however, was not void. It conveys the title to the purchaser, who holds it subject, however, to be defeated by the redemption of the land when the right of redemption *is estvblished and exercised in the manner provided by law*."

In *Slyfield v. Barnum*, ib. page 246, it is said:

"The deeds in question, then, were executed *without authority*. They are not absolutely void, it is true, for they operated to transfer the title to the lands to the grantee. But they did not have the effect to terminate the right of redemption, and the title conveyed by them was subject to be defeated by the exercise of that right;(Bowers v. Hallock, ante,) and as long as a right to redeem the land exists, there can be no completed sale; and the settled rule is that until there is a completed sale the period of limitation presented by the statute does not begin to run."

The court is speaking of the five year period under the section above quoted.

Under these decisions it is clear that appellant's right under the tax deed, was to bring his action to redeem. He owed the taxes, and makes no complaint against the levy, assessment, or manner of sale, other than it was in the wrong county. The deed, though void for want of power, conveyed the legal title, and he must get that title out of the tax title vendee in the manner provided by statute before he can be

entitled to possession. While, therefore, the special statute will not run, because of its peculiar wording, yet this right to redeem by action under section 893, being a right that must have an end somewhere, by some kind of limitation, does terminate under the general statute above quoted.

Although this statute requiring action to be brought in equity to redeem, was enacted after the sale, yet it applies to the remedy, and as the full period of the general statute has run since its enactment, appellant is bound by its provisions.

The right to plead this statute against the claim of appellant is precisely the same as the right to plead adverse possession, as a ground for quieting title. The tax deed was void for want of power to make it; the right to redeem by action arose when the new statute was enacted; that right has not been exercised within the period for recovering interests in real estate; hence the right to *ever redeem* or question the validity of the deed, and secure possession of the land, has become effectually barred under the statute and appellees' right to quiet title on the once imperfect, but now unassailable tax deed is complete.

Unless this view is correct, then the right to bring action under section 893 is never barred. The statute does not contemplate such a *hiatus*.

The statute is also plead against the right to question the sheriff's deed. This right is in effect, an effort to recover real property, and must be brought within the ten year limit quoted. The case of *Williams v. Allison*, supra, seems to be directly in point. The only way appellant could recover is to show that the sheriff's deed is invalid for some of the reasons set up in his answer; he must get that deed out of the way, for it is *prima facie* good. Under such a state of facts, the court held in the above case that it was really an action to recover real property, and within the general statute. Section 3356 of the revision of 1860, and 3126 of code of 1873, is as follows:

"Deeds executed by a sheriff in pursuance of the sales contemplated in this chapter, are presumptive evidence of the

ragularity of all previous proceedings in the case, and may be given in evidence without preliminary proof.

LACHES.

The long laches and acquiescence of appellant in the judicial and tax proceedings, and the claims of appellees and their grantors, now constitute a complete bar to the right of appellant to question appellees' right to the land.

In *Ferson v. Sanger* Davies, (U. S.) 252, 263, it is said:

"Lapse of time in equity operates not only as a positive bar extinguishing the civil title or right while it leaves the natural right to have all that effect which the law allows it (and this is the case where the court acts in obedience to the statute,) but it also has an operation in cases not within the statute, so that there has always been a limitation of suits in equity of every description. It is a rule, adopted by the court in the public interest and for the peace of society, to discourage litigation of stale and antequated demands."

In *Smith v. Clay*, 3 Bro. Ch. 640, Lord Camden says:

"A court of equity has always refused to aid stale demands, where the party has slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence; where these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced, and from the beginning of this jurisdiction there was always a limitation to suits in this court."

In *Hovenden v. Annesley*, 2 Sch. & Lef. 637, Lord Redesdale lays it down as what he calls the common law of courts of equity, "that every new right of action in equity that accrues to a party, whatever it may be, must be acted upon, at the utmost, within twenty years."

These principles have been repeatedly affirmed by this court, and the language quoted in very many cases. See,

Piatt v. Vattier, 9 Pet. 446; *McKnight v. Taylor*, 1 How, 161, 168; *Bowman v. Wathen*, ib. 189; *Wagner v. Baird*, 7 How 234; *Stearns v. Page*, ib. 829; *Badger v. Badger*, 2,

Wall. 87; *Hume v. Beale*, 17 Wall. 336; *Marsh v. Whitmore*, 21 Wall. 183-5; *Case of Broderick's Will*, ib. 503; *Sullivan v. Portland, etc., R. R. Co.* 94 U. S. 806,811; *Brown v. County of Buena Vista*, 95 U. S. 157, 160-1; *Haywrd v. National Bank*, 96 U S 611, 617; *Golden v. Kimmel*, 99 U. S. 201, 210; *Lansdale* v *Smith;* 106 U S 391; *Speidel* v *Henrici*, 120 U S 377 387; *Richards v. Mackall*, 124 U. S. 183, 187; *Norris v. Haggin*, 136 U. S. 386; *Mackall v. Casilear*, 137 U. S. 556; *Hanner v. Moulton*, 138 U. S. 486; *Underwood v. Dugan*, 139 U. S. 383; *Martin v. Gray*, 142 U. S. 236; *Hammond* v. *Hopkins*, 143 U. S. 224; *Felix* v. *Patrick*, 145 U. S. 317; *Ware* v. *Galveston City Co.*, 146 U. S. 102.

In these various cases will be found enunciated the principles on which parties are held absolutely barred by their laches and acquiescence, and the elements on which this doctrine is based. In Bowen v. Wathen. it is said that the doctrine of equitable bar by lapse of time is the settled law of this court. On page 196 the court say, after holding non-residence no excuse for delay.

"If Bowman, by negligence, or by a failure to look after and protect his own interests, permit the title of another to grow into full maturity, he thereby recognizes the force of the principle of the bar by lapse of time, *which creates a title as complete in equity as would be imparted by an express conveyance.*"

This declaration of acquisition of title by the equitable doctrine of laches. fully sustains our claim that, by analogy to the doctrine, which authorizes actions to quiet title on adverse possession, one, who has title by laches of the opposite party, can sustain his action to quiet title thereon.

In Wagner v. Baird the court on page 257 say:

"But there is a defence peculiar to courts of equity, founded on a lapse of time and the staleness of the claim, where no statute of limitations directly governs the case. In such cases courts of equity often act upon their own inherent doctrine of discouraging. for the peace of society, antequated

demands, by refusing to interfere where there has been gross laches in prosecuting right, or long acquiescence in the assertion of adverse rights."

This language is quoted in Badger v. Badger.

In the case of Broderick's will, where an effort was made to impeach a probated will, on the ground of forgery, the court on page 510 discussing the excuse for delay, say:

"Parties cannot thus by their seclusion from the means of information, claim exemption from the laws that control human affairs, and set up a right to open up all the transactions of the past. The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*."

In Golden v. Kimmell, it is said on page 210:

"For fourteen years the complainants have slept upon their rights, and there is not a single allegation in the bill, nor a particle of proof introduced in their behalf to excuse their manifest laches in not seeking an account until all the parties in interest have departed this life. Equity courts in cases of concurrent jurisdiction usually consider themselves bound by the statute of limitations which govern courts of law in like cases, and this rather in obedience to the statute ot limitations than by analogy. *Wagner* v. *Baird*, 7 How. 234. In many other cases they act upon the analogy of the statutory limitations at law, as where a legal title would in ejectment be barred by twenty years' adverse possession courts of equity will act upon the like limitation, and apply it to all cases of relief sought upon equitable titles or claims touching real estate. *Moore* v. *Green*, 2 Curt. C.C. 202; 2 Story Eq. Jur. (8th ed.) 520; *Farnum* v. *Brooke*, 9 Pick (Mass.) 243."

In Lansdale v. Smith, it is said, that "long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused, except by showing some actual hindrance or impediment, caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor." This language is quoted in Hammond v. Hopkins.

Richards v. Mackall was a case where it was sought to

set aside a judicial sale on the ground among others that the advertisement and deed were void for insufficient description. Complainant knew of the defects, and touching his laches, the court say:

"We find nothing whatever in the record to excuse the failure of appellee to institute legal proceedings, in due time, to have the sale set aside. He knew that the appellant relied upon the sale, and upon the faith of it expanded large sums. He knew that the premtses here in dispute were in fact levied on for his debts, and were intended to be sold in satisfaction of those debts. But after the property has largely increased in value, and after sleeping upon his rights for nearly twelve years, with information during the whole of that period, of every fact now relied upon by him, appellee asks the aid of a court of equity to set aside the sale and conveyance and adjudge him to be the owner of the property; and chiefly, because of a mistake of the officer in not so describing the premises in the advertisement of sale and in the conveyance, as to properly identify them. In our judgment, he is not in a position to claim the interference of a court of equity."

In Underwood v. Dugan the doctrine is set forth in language almost literally applicable to the case at bar. The court say:

"The property has increased in value, and now these plaintiffs are invoking the aid of a court of equity to dispossess those who personally have acted in good faith, who were not parties to, or cognizant of any wrong, and who have occupied and improved the property in full reliance upon the sufficiency of the title they possessed. Surely, if laches is ever recognized as a complete bar, it ought to be in this case. And this doctrine of laches rests on no arbitrary or technical rule. It is founded on the plainest principles of substantial justice. Ownership of property implies two things—*First*, attention to it; *second*, a discharge of all obligations, of taxation or otherwise, to the state which protects it. When it appears that one who now asserts a title to property, arising more than the lifetime of a generation ago, has during all these years neglected the property, and made no claim of title thereto, a reasonable presumption is that, whatever may be apparent on the face of the instrument supposed to create the

title, were the full facts known, facts which cannot now be known by reason of the death of the parties to the transaction, it would be disclosed that no title was in fact obtained; or, if that be not true, that he considered the property of such little value that he abandoned it to the state which was protecting it. So, if, the title being beyond challenge, during these years he pays no taxes thereon, makes no effort to improve or increase its value, and, by the labor and efforts of others, under the protecting power of the state, large value has been given to it, the state may properly say to him, as may also the individuals who have thus wrought this change in value: 'You abandoned the property when it was comparatively valueless. You have taken no share in the burdens of taxation or the support of the state. Others have toiled, paid taxes, and made the property valuable. Therefore, because of your shirking of duties and obligations, you shall not, whatever may have been the nature of your title in the first instance, be permitted to appropriate the value thus produced by others.'"

In *Matthews v. Culbutson*, 83 Iowa, 434, the court hold that a failure to assert title for nearly twenty years. as against a tax title, barred the patent owner though there was less than ten years actual occupation of the premises by the holder of the tax title. The owner had knowledge of the tax deed, and of its invalidity, but took no steps to set it aside, and did nothing to indicate he made any claim to the land. He paid no taxes and permitted the land to be imroved by innocent purchasers. Several of the above cases are cited in the opinion.

No further citation of authorities is deemed necessary. All the elements of estoppel by laches are shown in those cited. The facts in this case show them all present. They are the existence of proceedings directly attacking appellant's title; acquisition of title thereunder in good faith; expenditure of time, labor and money in full reliance on that title; actual knowledge by appellant of the attack on his title at the very beginning and full opportunity to assert his rights, if any in fact he had; large increase in the value of the property; failure for twenty-seven years to make any claim to the property, to ever pay any taxes or exercise any acts of control or own-

ership over it, or to take any steps to set aside the sheriff's or tax deed, or to in any manner warn parties of his claim; and lastly, failure to give any reason or excuse for this gross laches. The only two acts ever done by appellant evincing any claim by him to this land were to first encumber the records with a deed reeking with fraud. and then thirty years afterwards bring an action of ejectment for the land. He never discharged the obligation which the law of Iowa placed upon him, of having his land properly taxed and paying the taxes thereon, and in return for which he would receive the protection of the state for his property. He took his tainted deed to the land when it was worth scarcely seventy-five cents an acre, and when the country was a wilderness on the verge of blooming into a garden of civilization. A generation later, after that civilization, united with the toil and hardships of appellees, have increased its value fifty fold, he asks that he be allowed to appropriate all these fruits of the industry of others, and that, too under a deed, the taking of which is branded by the laws of Iowa as criminal. Can a court of equity be asked to do a more flagrant and indefensible act of injustice? Appellant must have known that the land would come under the innocent hand of honest industry and be made the home of persons who would be deceived by his long silence and abandonment, and led to rely thereon. Actual knowledge by him of the adverse claims and occupation and improvement of the land thereunder. is not necessary to entitle appellees to the benefit of this doctrine. This is distinctly held in the case of *Bowman v. Wathen*, cited supra. Nor is any express intent to deceive, or defraud, necessary.

But it is claimed that the title was absolutely void, and hence appellees could not become innocent purchasers, and that the doctrine of laches cannot apply. That they all purchased in good faith, as a matter of fact, is clear from the record. Appellees acted with prudence by having the title examined. and it was pronounced good by a competent attorney. All their improvements were put on the land in the belief that the title was good. That the title may now be determined

invalid, after a full investigation by the highest court in the land, cannot have the effect to prevent the doctrine from applying, by putting the parties on equality through constructive notice. If such were true, then in no case, where the matter is one of conflicting titles, could the doctrine ever be applied after it was once determined by the court that originally the claimant's title was void. Such a doctrine would nullify the decision in the Bowman—Wathen case. An examination of the titles as shown in the tabulated statement on pages 117 to 120 of the record, will give the court a fair idea of how marketable these titles were considered by the public, and of the great number of times different portions of this land have been transferred. The record shows loans by the county on the land and other mortgages. It will be remembered that title was claimed under the tax sale, which constituted an independent source of title; and under judicial proceedings, in direct antagonism to the claim of the appellant.

Appellant cannot take himself off to seclusion, pay no attention to his property, ignore the march of progress, and then claim he is excused by actual ignorance of the true state of affairs. Case of Broderick's Will, supra. He knew the land was subject to taxation, and would be sold for the unpaid taxes; that *he* had never paid a cent of tax; that effort was being made to sell the land and cut out his interest. He does not even testify that he had no knowledge of the condition of things. He offers no excuse for his gross laches. His claim of poverty is of no value, except to show the hollowness of the claim of purchase of the land. That it does not excuse his inaction is held in *Hayward v. National Bank*, supra, and in *Leggett v. Standard Oil Co.*, 149 U. S. 287. Nor was his non-residence an excuse.

That he is barred of all claim in this land by his long silence and acquiescence seems to us to admit of no controversy whatever. Such being the case, and such being the conclusion of equity, there can be no reason why this equitable title should not become the foundation for affirmative

relief, especially, where it is sought to deprive the party of the benefit of it, by resorting to an action at law. If the "title is transferred as completely in equity as if an express conveyance were made," it is certainly sufficient under the Iowa statute to form the basis of affirmative relief.

In *Wetzel v. Minn. Transfer Co.*, 56. Fed. 919. the title of the defendant was quieted against the complainant, it being held that the latter was barred by laches, from questioning it.

It may be insisted, as in the lower court, that appellees are themselves barred from asking any relief. But under the authorities one in possession is under no obligation to take any steps to remove a cloud, so long as he is not disturbed. The point is expressly ruled in *Ruckman v. Cory*, 129 U. S. 387, and in *Simmons Greek Coal Co. v. Doran*, 142 U. S. 417.

The law action was not commenced for over a quarter of a century after the judicial proceedings, and for nearly the same time after the tax title was secured. A right of action arose at once in each case as soon as the adverse claim was made by securing and recording the deeds. Under the laws of Iowa the right to attack the proceedings in either case would be barred at most in ten years time, as heretofore shown. Even if the court but followed the statutory limitation in each instance both deeds would be held good; but we have a case as to both deeds in which the sturdy doctrine of Lord Reddesdale, that every right of action is barred in equity after twenty years, will apply, and on no possible theory can the appellant be now held to have any interest in this land. It is not known whether he ever saw the deed or procured it to be recorded.

When we remember that he comes into court surrounded with the odor of fraud in the inception of his claim, and that he in no manner seeks to purge himself of that taint, and that as a matter of fact he was never the owner of the land, but, on the contrary, was a party to a transaction condemned by the laws of Iowa as criminal, we have in all probability the

true explanation of his long continued silence and his failure to testify in his own behalf. It is, that he in fact made no claim to the land, and that he fully acquiesced in the subjection of it to the payment of the honest debt of its true owner.

On the other hand appellees come into court clean handed and innocent. The repayment to them of the present value of their improvements and the taxes paid by them, less the rents and profits, which as occupying claimants, they would be entitled to in the action in ejecctment if defeated, is no compensation. Whether they could recover their original purchase money with interest depends upon the solvency of the warrantor, a subject the court cannot investigate. But supposing it receivable, still the years of labor given to the development of the land, and of waiting upon its increase in value, must be a total loss, and cannot be compensated for. Appellees have relied upon their title and acted the part of good citizens by improving their property and paying their share of the burdens of sovereignty. The fruits of their industry are imperiled by the unconscionable claims of appellant. They feel that they cannot get full relief in a court of law, and, therefore, come to a court of equity, asking that their title be quieted. Others are involved in the same manner.

In conclusion we think the decree of his Honor, Judge Shiras, is abundantly supported by the record. The right to maintain the action seems perfect under the Iowa statute and the decisions. The appellant is in no position to question the original proceedings in attachment, or the deed. The former are protected by the chancery decree, and the latter by the statute of limitations, and both by the lapse of over twenty years' time, and the laches of appellant. The bill makes out a clear case for quieting title, on both a legal and equitable title, and appellant has subjected himself to the action by his unauthorized assertion of title under his fraudulent deed.

An examination, in this brief, of the authorities cited by counsel on the trial below, and which will doubtless be cited

here, is not deemed necessary. Except as to the case of Remer v. McKay it is not a question of the correctness of the principles announced by them, but a question of their application to the facts. That they are not applicable is sufficiently apparent without any special mention.

Respectfully submitted,

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